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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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

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WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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WHEN: May 25, at 1:00 pm
WHERE: William J. Green, Jr. Federal Building, Conference Room 6306–10, 600 Arch St. Philadelphia, PA
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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

Agricultural Marketing Service

7 CFR Part 80

[Docket No. FV-93-80-01]

RIN 0581-AA93

Regulation Governing the Fresh Irish Round White Potato Diversion Program, 1992 Crop

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth the terms of the Fresh Irish Round White Potato Diversion Program for the 1992 crop pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended. The program will assist Irish round white potato growers faced with oversupplies and low prices.

DATES: The interim rule is effective on May 19, 1993.

Comments must be received by July 19, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Darrell Breed, Chief, Commodity Procurement Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2548—South Building, Washington, DC 20090-6456. All written submissions made pursuant to this rule will be made available for public inspection in room 2548—South Building, USDA, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sandra Gardei, Assistant Branch Chief, at room 2548-South Building, USDA or call (202) 720-6391.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "nonmajor." It has been determined that this rule will not result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, federal, state or local governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises in domestic or export markets.

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12778 Civil Justice Reform. The provisions of the interim rule do not preempt state law and are not retroactive. Before any judicial action may be brought regarding the provisions of this interim rule the appeal and mediation procedure in 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Information collection requirements contained in this (part, subpart) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35, and have been assigned OMB control numbers 0581-A880.

On the basis of an environmental evaluation, it has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Department has determined that the implementation of this rule by the agencies of the Department will: (1) Not cause any measurable adverse environmental effects on the human environment; (2) not diminish the long-term environmental productivity of the Nation's resources; and (3) not cause any irretrievable commitments of natural resources. Therefore, an additional environmental assessment or a detailed environmental impact statement is not required under the provisions of the National Environmental Policy Act and related regulations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionally burdened. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Because there is a preponderance of entities shipping Irish round white potatoes that meet these gross revenue limitations it is anticipated that the majority of the program participants could be classified as small entities. The provisions of the rule provide a benefit to such small entities without substantial regulatory restriction. Therefore the provisions of the RFA are not applicable and no Regulatory Flexibility analysis is required.

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

The title and number of the Federal Assistance Program to which this interim rule applies is: Title—Section 32 Diversion Program; Number—10.166, as found in the 1990 edition of the Catalog of Federal Domestic Assistance.

Interested parties are invited to submit comments with respect to this action. However, pursuant to 5 U.S.C. 553, it is found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because marketing is in process, the commodity is perishable, and program effectiveness would be adversely affected by undue delay. The crop is in the process of being sent to market and for a diversion to occur the rule must be

made effective immediately. Written comments may be submitted within 60 days of the publishing of the rule in the **Federal Register** and will be considered when the rule is made final.

Background

Clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), ("section 32") authorizes the Secretary of Agriculture to "encourage the domestic consumption of such [agricultural] commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce * * *" Section 32 also authorizes the Secretary to use section 32 funds "at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section." Furthermore, "determinations by the Secretary as to what constitutes diversion, and what constitutes normal channels of trade and commerce, and what constitutes normal production for domestic consumption shall be final."

Recent USDA statistics indicate that as of April 1, 1993, the stocks of Irish round white potatoes held by growers were 27 percent greater than those held at the same time in 1992. Based on these statistics and other market factors the Secretary has determined that the fresh Irish round white potato 1992 crop is in surplus supply and that the domestic consumption of such potatoes will be encouraged by using section 32 funds to divert the potatoes from the normal channels of trade and commerce under a Fresh Irish Round White Potato Diversion Program.

List of Subjects in 7 CFR Part 80

Administrative practice and procedures, Agriculture, Agricultural commodities, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 80 is revised to read as follows:

PART 80—FRESH IRISH POTATOES

Subpart A—Fresh Irish Round White Potato—Diversion Program

Sec.
80.1 General statement.
80.2 Administration.
80.3 Definitions.
80.4 Length of program.
80.5 Rate of payment.
80.6 Eligibility for payment.
80.7 Application and approval for participation.
80.8 Inspection and certificate of diversion.
80.9 Claim for payment.
80.10 Compliance with program provisions.
80.11 Inspection of premises.
80.12 Records and accounts.
80.13 Offset and assignments.
80.14 Appeals.

Subpart B—[Reserved]

Authority: 7 U.S.C. 612c.

Subpart A—Fresh Irish Round White Potatoes—Diversion Program

§ 80.1 General statement.

In order to encourage the domestic consumption of 1992 crop fresh Irish round white potatoes by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), offers to make payment to producers who divert potatoes that they produced by donating them to charitable institutions for human consumption or by using such potatoes as livestock feed or for compost purposes in accordance with the terms and conditions set forth herein.

§ 80.2 Administration.

The program will be administered under the general direction and supervision of the Director, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be carried out by the Agricultural Stabilization and Conservation Service (ASCS), USDA, through ASC state and county committees. The ASC county committees will authorize one or more employees to act as representatives of the USDA, to approve applications for participation. The ASC state or county committees or their authorized representatives do not have authority to modify or waive any of the provisions of this subpart.

§ 80.3 Definitions.

(a) *Charitable institutions* mean those organizations which offer food, housing, and other necessities to low income, homeless, or other persons in need of assistance in obtaining basic sustenance.

(b) *Diversion* means the delivery of potatoes to an eligible outlet.

(c) *Eligible outlet* means charitable institutions, livestock feeding operations, or compost users.

(d) *Potatoes* mean 1992 crop fresh Irish round white potatoes produced and stored in the United States which:

(1) If intended for human consumption, meet all the requirements of chapter 125, section V.A., "Processing Grade" as defined by the "Official Classifications, Grades and Standards for Potatoes Packed in Maine," which can be obtained from the local county Agricultural Stabilization and Conservation Service Office, unless modified by the, "Application for Participation in Fresh Irish Round White Potatoes Diversion Program" (Form ASCS–117); or

(2) If intended for use as livestock feed or for use as compost meet minimum standards for Maine "Processing Grade", which can be obtained from the local county Agricultural Stabilization and Conservation Service Office, and are cut, chopped, sliced, gouged, crushed, ensiled, or cooked to the degree that the general appearance of the potatoes has been damaged to such an extent that the potatoes are readily and obviously identifiable as having been rendered unsuitable to enter into normal channels of trade and commerce as potatoes as determined by ASCS or its representative.

(e) *Producer* means an individual, partnership, association, or corporation located in the United States that grew for market and are in possession of such potatoes as of May 19, 1993 and whose Form ASCS–117 has been approved by USDA.

§ 80.4 Length of program.

This program will be effective May 19, 1993 and will continue for 45 calendar days.

§ 80.5 Rate of payment.

The rate of payment for potatoes, as defined in § 80.3(d), will be $3.00 per hundredweight. Payment will not be made for any fractional part of hundredweight.

§ 80.6 Eligibility for payment.

Payments will be made under this program to any producer of potatoes:

(a) Who executes and files Form ASCS–117.

(b) Whose application is approved.

(c) Who diverts potatoes after the date Form ASCS–117 is approved by USDA before the termination date of this subpart.

(d) Who files a claim as provided in § 80.10.

(e) Who complies with all other terms and conditions in this subpart.

§ 80.7 Application and approval for participation.

(a) Applicants must submit a completed and signed Form ASCS–117 to the local ASCS county office. The Form ASCS–117s will be considered by the ASC county committee in the order received by the ASCS county office and in accordance with the availability of funds.

(b) Applicants will be notified of the approval or rejection of the submitted

forms. Approved Form ASCS–117s may be modified or amended with the consent of the applicant and the duly authorized representative of the ASC county committee provided that such modification or amendment does not conflict with the provisions of this subpart.

§ 80.8 Inspection and certificate of diversion.

Prior to diversion, the potatoes must be inspected by an inspector authorized or licensed by the county, state, or Federal government to inspect and certify the class, quality, and condition of potatoes. The producer will be responsible for requesting and arranging for inspection so that the inspector can be present to determine which potatoes meet the definition of potatoes as provided in § 80.3(d). The producer must furnish such scale tickets, weighing facilities, or volume measurements as determined by the inspector to be necessary for ascertaining the net weight of the potatoes being diverted. The cost of inspecting, verifying the quantity, certifying that diversion has been performed, and issuing certificates will be borne by the producer. Certificates must be prepared on "Invoice Certificate of Inspection and Diversion" (Form ASCS–118).

§ 80.9 Claim for payment.

In order to obtain payment, the producer must submit to the county ASCS office which approved his application a properly executed Form ASCS–118, and (except where the producer is the livestock feeder) a certification of receipt by the charitable institution, livestock feeder, or compost user. All such claims must be filed not later than one calendar month after the termination date specified in the applicable approved application. For those potatoes which fail to meet the definition of potatoes (§ 80.3(d)), payments will be based on the percentage of the potatoes meeting the definition.

§ 80.10 Compliance with program provisions.

If USDA determines that any provisions of the application or of these regulations has not been complied with whether by the producer or by charitable institution, livestock feeder, or compost user or that any quantity of potatoes diverted under this program was not used exclusively for donation to charitable institutions, livestock feeders, or for compost, whether such failure was caused directly by the producer or by any other person or persons, the producer will not be entitled to diversion payments in connection with such potatoes, and must refund any USDA payment made in connection with such potatoes, and will be liable to USDA for any other damages incurred as a result of such failure to use the potatoes exclusively for donation to charitable institutions or for use as livestock feed or compost. The USDA may deny any producer the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if USDA determines that:

(a) The producer has failed to use or caused to be used any quantity of potatoes diverted under this program exclusively for donation to charitable institutions, livestock feed, or compost, whether such failure was caused directly by the producer or by any other person or persons,

(b) The producer has not acted in good faith in connection with any transaction under this program, or

(c) The producer has failed to discharge fully any obligation assumed by him under this program.

§ 80.11 Inspection of premises.

The producer, charitable institution, livestock feeder, or compost user must permit authorized representatives of USDA, at any reasonable time, to have access to their premises to inspect and examine such potatoes as are being diverted or stored for diversion, and to inspect and examine the facilities for diverting potatoes to determine compliance with the provisions of this program.

§ 80.12 Records and accounts.

The producer, the charitable institution, livestock feeder, or compost user participating in this program must keep accurate records and accounts showing the details relative to the diversion and disposition of the potatoes. The producer, charitable institution, livestock feeder, or compost user must permit authorized representatives of USDA and the General Accounting Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with the provisions of this program. Such records and accounts must be retained for three years after date of last payment to the producer under the program or for two years after date of audit of records by USDA as provided herein, whichever is the later.

§ 80.13 Offset and assignment.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under state law, and without regard to any claim or lien against the crop or proceeds thereof in favor of the owner or any other creditor except statutory liens belonging to agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 3 shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 80.14 Appeals.

Appeals under this part will be in accordance with 7 CFR part 780.

Subpart B—[Reserved]

Dated: May 14, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–11855 Filed 5–14–93; 4:54 pm]

BILLING CODE 3410–02–P

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7 CFR Part 916

[Docket No. FV–92–916–1FR]

Nectarines Grown in California; Revised Minimum Size Requirements for Nectarines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with appropriate changes, the provisions of an interim final rule which relaxed minimum size requirements for May Glo nectarines and revised variety-specific size requirements for several varieties of nectarines grown in California. The revisions should result in more suitable sizes of nectarines being shipped to the fresh market, and increased returns to California nectarine growers.

EFFECTIVE DATE: May 19, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California, hereinafter referred to as the order. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 245 California nectarine handlers subject to regulation under the marketing order covering nectarines grown in California, and about 740 producers of nectarines in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee (committee) met on December 2, 1992, and recommended revisions in the minimum size requirements for certain varieties of nectarines to be effective for the 1993 season, which begins April 15. Specifically, the committee recommended that the minimum size requirements for May Glo variety nectarines be relaxed and that variety-specific size requirements be established for 14 varieties and that such requirements be removed for 4 varieties.

The interim final rule was issued on February 9, 1993, and published in the **Federal Register** (58 FR 8534, February 16, 1993), with an effective date of April 15, 1993. That rule amended § 916.356 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended March 18, 1993. Four comments were received. Two were filed by the committee, one was filed by Gerawan Farming (Gerawan), a grower and shipper of California nectarines, and the last was filed by Mr. Scott Pattison, Executive Director of Consumer Alert (Consumer Alert). Each point raised in the comments will be discussed below.

In its first comment, the committee requested that several modifications be made in the variety-specific size requirements established in the interim final rule, so that those requirements conform with the committee's December 2, 1992, recommendations.

Different minimum size requirements have been established for the various nectarine varieties, reflecting both seasonal and varietal influences which affect average fruit sizes. Smaller minimum sizes generally have been established for earlier maturing varieties, while later maturing varieties, since they tend to attain a larger size at maturity, have been required to meet larger minimum sizes. In recommending that 14 varieties of nectarines be added to the variety-specific size requirements, the committee considered these factors and recommended that 1 variety (April Glo) be required to meet a minimum of Size 108; that 2 varieties (June Brite and May Lion) be at least Size 88; that 3 varieties (Red May, Rose Diamond, and Zee Grand) be at least Size 84; and that the remaining 8 varieties (August Glo, Big Jim, Early Red Jim, Nectarine #4, Summer Fire, Summer Lion, Sunburst, and 9–86–04–87) be at least Size 80.

In its second comment, the committee stated that it had further evaluated its December 1992 recommendation for the appropriate minimum size requirement for the Rose Diamond variety of nectarines. Initially, the committee recommended that nectarines of such variety be required to be at least Size 84. However, after evaluating additional information received from nectarine handlers, the committee found that the characteristics of the variety justified a lower minimum requirement of Size 88. Based upon the information available, including that submitted by the committee, the Department has determined that nectarines of the Rose Diamond variety should be subject to a minimum size requirement of Size 88, rather than Size 80 as established in the interim final rule. This change has been incorporated in this final rule.

Prior to issuing the interim final rule, the Department reviewed all available information, including that submitted by the committee, and found that the committee's recommendations with respect to variety-specific size requirements were appropriate. However, in the interim final rule, six of the 14 varieties added to the variety-specific size requirements were incorrectly listed under paragraph (a)(5) of § 916.356, making them subject to a minimum of Size 80. Thus, the committee's requests are incorporated into this final rule, and the minimum size restrictions for the six varieties incorrectly categorized in the interim final rule are relieved in this final rule to the level recommended by the committee.

Gerawan's comment indicated that it favored a minimum requirement of Size 108 for the May Glo variety throughout the entire season, rather than Size 108 through May 5 and Size 96 thereafter. The May Glo variety of nectarines is an early variety, with harvest beginning in mid-April. Harvest begins in the desert area of the Coachella Valley, which is the growing area in California with the earliest nectarine harvest. Fruit grown in this area generally does not size as well as fruit grown in other areas of the State, due to the onset of very hot

weather early in the season which retards further fruit growth and results in a relatively short growing season. In general, May Glo nectarines grown in the Coachella Valley mature at a smaller size than fruit grown in other parts of the State. Thus, the minimum requirement of Size 108 through May 5—when Coachella Valley shipments end—is appropriate given the growing conditions and sizing characteristics of the fruit grown in that area. A higher minimum size requirement for the remainder of the season is also appropriate, given that May Glo variety nectarines from other parts of the State are shipped during a later time period. Such nectarines are expected to reach at least the Size 96 level prior to maturity due to the growing conditions prevailing in other parts of the State. Thus, Gerawan's request to maintain the minimum requirement of Size 108 for May Glo variety throughout the entire season is denied.

Gerawan also requested that modifications be made to the existing California nectarine minimum size requirements to allow the shipment of fruit one size smaller than the current minimum size, provided that such fruit meets a "California Well Matured" maturity standard, a higher maturity standard than the minimum currently prescribed under the order.

In its comment, Consumer Alert requested that the Department eliminate all minimum size requirements for California nectarines. Consumer Alert stated that minimum size requirements for California nectarines result in the unnecessary destruction of edible fruit. Further, Consumer Alert stated that Department decisions on minimum size requirements for California nectarines should not be based on a study conducted by the committee during the 1992 season to measure consumer satisfaction with the size of such fruit.

The committee, based on its research, experience, and considerable deliberation, continues to support the current size requirements (as modified by this final rule) and believes these requirements best serve the objective of maximizing customer satisfaction. Minimum quality and size requirements imposed under the marketing order covering California nectarines are perceived to be a principal reason for the State's commanding market share now held for this product, and it appears that the committee's recommendations will provide reasonable quality limits for marketing California's 1993 nectarine crop. Based upon all the information available, including that submitted by the committee, the Department has determined that minimum size requirements for 1993 season California nectarines should be established as recommended by the committee. Thus, the requests filed by Gerawan and Consumer Alert on this issue are denied.

Finally, Gerawan requested that all correspondence pertaining to nectarine size requirements received by the Department over the past year be made a part of the rulemaking record and considered by the Department prior to issuance of a final rule. The Department has considered all available information concerning minimum size requirements for California nectarines prior to issuance of this rule. However, only those submissions received within the time period prescribed in the interim final rule are included as comments in the official record pertaining to this rulemaking action.

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

After consideration of all relevant matter, the information and recommendations submitted by the committee and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (58 FR 8534, February 16, 1993), with the changes herein specified, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The few changes from the interim final rule relieve restrictions and are consistent with the comments received;

(2) Nectarine growers and handlers need to be apprised of this action as soon as possible;

(3) the shipping season for nectarines begins in early April; and

(4) no useful purpose would be served by delaying the effective date until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

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

2. Accordingly, the interim final rule amending the provisions of § 916.356 which was published in the **Federal Register** (58 FR 8534, February 16, 1993) is adopted as a final rule with the following changes. In § 916.356, the introductory texts of paragraphs (a)(2) and (a)(4) are revised; current paragraphs (a)(5), (a)(6), (a)(7), and (a)(8) are redesignated as paragraphs (a)(6), (a)(7), (a)(8), and (a)(9), respectively, and revised and a new paragraph (a)(5) is added to read as follows:

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

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *

(2) Any package or container of May Glo variety nectarines through May 5 of each year, or April Glo, Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines, unless:

* * * * *

(4) Any package or container of Apache, Early May, Early May Grand, Mike Grand, Grand Stan, June Brite, June Glo, May Grand, May Diamond, May Lion, Pacific Star, Red Delight, Rose Diamond, Sparkling May, Star Brite, or Sunfre variety nectarines unless:

* * * * *

(5) Any package or container of Red May, or Zee Grand variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectariness in the package or container, contains not more than 75 nectarines.

(6) Any package or container of Alshire Red, Alta Red, August Glo, August Red, Autumn Delight, Autumn Grand, Big Jim, Bob Grand, Early Red Jim, Early Sungrand, Fairlane, Fantasia, Firebrite, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, Independence, July Red, King Jim, Kism Grand, Late Le Grand, Le Grand, Mid Glo, Moon Grand, Nectarine #4, Niagrara Grand, P–R Red, Red Diamond, Red Free, Red Jim, Red Lion, Rio Red, Royal Giant, Ruby Grand, Scarlet Red, September Grand, September Red, Son Red, Sparkling

June, Sparkling Red, Spring Diamond, Spring Red, Summer Beaut, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Summer Star, Sunburst, Sun Diamond, Sun Grand, Super Red, Super Star, Tasty Free, Tasty Gold, Tom Grand, Zee Glo, 181–119, 80P–1135, or 9–86–04–87, variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

(7) During the period April 15 through May 31 of each fiscal year, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraph (a)(2), (3), (4), (5), or (6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

(8) During the period June 1 through June 30 of each fiscal year, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraph (a)(2), (3), (4), (5), or (6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

(9) During the period July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraph (a)(2), (3), (4), (5), or (6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

* * * * *

Dated: May 12, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–11755 Filed 5–18–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–93–AD; Amendment 39–8580; AD 93–10–01]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections to detect cracks and corrosion of the portal latch pin support fittings of certain cargo doors, and rework or replacement of damaged parts; and eventual modification of certain latch pin support fitting installations. That AD also requires inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches of certain cargo doors, and rework or replacement of damaged parts. The actions specified in the AD are intended to prevent reduced structural integrity of the latch system for the cargo doors, resulting in a door opening in flight and rapid depressurization of the airplane. This action clarifies the compliance time for accomplishing optional repetitive inspections of the cam latches.

DATES: Effective May 14, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of May 14, 1993 (58 FR 19322, April 14, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2783; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On March 22, 1993, the FAA issued AD 93–06–03, Amendment 39–8528 (58 FR 19322, April 14, 1993), to require inspections to detect cracks and corrosion of the portal latch pin support fittings of certain cargo doors, and rework or replacement of damaged parts; and eventual modification of certain latch pin support fitting installations. That AD also requires inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches of certain cargo doors, and rework or replacement of damaged parts. That action was prompted by numerous reports of corroded or cracked fittings, cam latch bellcranks, and cam latches. The actions required by that AD are intended to prevent reduced structural integrity of the latch system for the cargo doors, resulting in a door opening in flight and rapid depressurization of the airplane.

The compliance time for accomplishment of optional repetitive inspections of the cam latches was published inadvertently in paragraphs (g)(1)(iii) and (g)(2)(ii) of AD 93–06–03 as "at intervals not to exceed 25,000 flight hours after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first." However, the compliance time for those repetitive inspections should have been specified as "at intervals not to exceed 25,000 flight hours or 5 years, whichever occurs first."

The FAA has determined that it is appropriate to take action to correct AD 93–06–03 to clarify this compliance time in order to provide affected operators with an appropriate interval for accomplishment of the repetitive inspections.

Action is taken herein to correct the error and to correctly add the AD as an

amendment to Section 39.13 of the Federal Aviation Regulations (FAR). The effective date of the rule remains May 14, 1993.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects a final rule in order to provide an appropriate interval for accomplishment of the repetitive inspections, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8528 (58 FR 19322, April 14, 1993), and by adding a new airworthiness directive (AD), amendment 39–8580, to read as follows:

93–10–01 Boeing: Amendment 39–8580. Docket 92–NM–93–AD. Supersedes AD 93–06–03, Amendment 39–8528.

Applicability: Model 747 series airplanes; as listed in Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991, and Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent in-flight opening of the lower lobe forward and aft cargo doors and the main deck side cargo door, if installed, accomplish the following:

(a) Within the next 1,800 flight hours after the effective date of this AD, or 600 flight cycles after the effective date of this AD, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fittings on the lower lobe forward and aft cargo doors and on the main deck side cargo door, if installed and in the cargo configuration, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Repeat the inspection required by this paragraph at intervals not to exceed 1,800 flight hours or 600 flight cycles, whichever occurs first.

(2) If any cracked part is found as a result of the inspections required by this paragraph, prior to further flight, replace it and check the door rigging, in accordance with the service bulletin.

(b) Within the next 12,500 flight hours after the effective date of this AD, or 2,500 flight cycles after the effective date of this AD, or within 30 months after the effective date of this AD, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fittings on the main deck side cargo door, if installed and in the passenger configuration, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Repeat the inspection required by this paragraph at intervals not to exceed 12,500 flight hours, 2,500 flight cycles, or 30 months after the immediately preceding inspection, whichever occurs first.

(2) If any cracked part is found as a result of the inspections required by this paragraph, prior to further flight, replace it and check the door rigging, in accordance with the service bulletin.

(c) When converting from the passenger configuration to the cargo configuration, prior to further flight; and thereafter at intervals not to exceed 1,800 flight hours or 600 flight cycles, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fitting assemblies of the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991. Prior to further flight, replace any cracked parts found, in accordance with the service bulletin.

(d) When converting from the cargo configuration to the passenger configuration, prior to further flight; and thereafter at intervals not to exceed 12,500 flight hours, 2,500 flight cycles, or 30 months after the immediately preceding inspection, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fitting assemblies of the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991. Prior to further flight, replace any cracked parts found, in accordance with the service bulletin.

(e) Within the next 25,000 flight hours after the effective date of this AD, or 5,000 flight cycles after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (e)(1), (e)(2), and (e)(3) of this AD, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Disassemble parts and perform a detailed visual inspection to detect cracks and corrosion in the portal latch pin support fitting assemblies/installations on the lower lobe forward and aft cargo doors and on the main deck side cargo door, if installed, in accordance with the service bulletin. If cracks or corrosion are found, prior to further flight, repair or replace any damaged parts, and check the door rigging, in accordance with the service bulletin.

(2) Inspect to verify that all H–11 steel latch fitting-to-sill bolts, BACB30MT, and corresponding nuts, BACN10HR( ), are intact and that unsealed bolts are free of corrosion, in accordance with the service bulletin. If not, prior to further flight, install new bolts, BACB30MT, and corresponding nuts, BACN10HR( ); or install the superseding BACB3OUS bolts and BACN10HR( )CD nuts, in accordance with the service bulletin.

(3) Apply sealant to the portal latch pin support fitting and attaching hardware, in accordance with the service bulletin. (Application of sealant to fittings and attaching hardware that previously have been sealed is not required by this paragraph.)

(f) Accomplishment of paragraphs (e)(1), (e)(2), and (e)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraphs (a)(1), (b)(1), (c), and (d) of this AD.

(g) Within the next 6,000 flight hours after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first: Determine the configuration of the bellcrank/cam latch assembly of the lower lobe forward and aft cargo doors and of the main deck side cargo door, if installed; and prior to further flight, perform the procedures specified in either paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991.

(1) For cargo doors with cam latches attached to the bellcrank by cross-bolts, accomplish one of the procedures specified in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD:

(i) Replace all bellcranks and cam latches with bellcranks and cam latches of the new part configuration in accordance with Section III., paragraph F., of the service bulletin; and perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. Accomplishment of this paragraph constitutes terminating action for the requirements of paragraph (g) of this AD. Or

(ii) Inspect the bellcranks to detect corrosion, and repair or replace any corroded parts; and replace all cam latches with cam latches of the new part configuration; in accordance with Section III., paragraph G., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. Accomplishment of this paragraph constitutes terminating action for the requirements of paragraph (g) of this AD. Or

(iii) Inspect the bellcranks to detect corrosion, and repair or replace any corroded parts; and inspect the cam latches to detect cracks and corrosion and, prior to further flight, repair or replace any cracked or corroded parts; in accordance with Section III., paragraph H., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. If one

or more of the cam latches are repaired and/or reinstalled as a result of the actions required by this paragraph, thereafter, repeat the inspections of the cam latches required by this paragraph at intervals not to exceed 25,000 flight hours or 5 years, whichever occurs first.

(2) For cargo doors with cam latches attached to the bellcrank by axial-bolts, accomplish one of the procedures specified in either paragraph (g)(2)(i) or (g)(2)(ii) of this AD:

(i) Replace all cam latches that have cross-bolt holes with cam latches of the new part configuration, in accordance with Section III., paragraph I., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. Accomplishment of this paragraph constitutes terminating action for the requirements of paragraphs (g)(1)(iii) and (g)(2)(ii) of this AD. Or

(ii) If the cam latches do not have cross-bolt holes, they may be reinstalled. If the cam latches have cross-bolt holes, inspect those latches to detect cracks; replace any cracked cam latches; and reinstall any cam latches that are not cracked; in accordance with Section III., paragraph J., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. If one or more of the cam latches that have cross-bolt holes is reinstalled as a result of the actions required by this paragraph, thereafter, repeat the inspections of the cam latches required by this paragraph at intervals not to exceed 25,000 flight hours or 5 years, whichever occurs first.

(h) Accomplishment of the procedures specified in either paragraph (h)(1) or (h)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747-52A2233, dated August 29, 1991, constitutes terminating action for the requirements of paragraph (g) of this AD.

(1) If one or more of the cam latches on the lower lobe forward and aft cargo doors and main deck side cargo door was repaired and/or reinstalled in accordance with paragraph (g)(1)(iii) of this AD, replace those cam latches with cam latches of the new part configuration, in accordance with Section III. of the service bulletin. Prior to further flight, perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. Or

(2) If one or more of the cam latches that have cross-bolt holes on the lower lobe forward and aft cargo doors and main deck side cargo doors was reinstalled in accordance with paragraph (g)(2)(ii) of this AD, replace those cam latches with cam latches of the new part configuration, in accordance with Section III. of the service bulletin. Prior to further flight, perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin.

Note: Accomplishment of the requirements of paragraphs (g) and (h) of this AD in accordance with Boeing Alert Service Bulletin 747-52A2233, dated August 29, 1991, as amended by Notice of Status Change 747-52A2233 NSC 1, dated November 21, 1991; is equivalent to accomplishment of those requirements in accordance with Boeing Alert Service Bulletin 747-52A2233, dated August 29, 1991.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(j) 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.

(k) The inspections, replacements, check, repairs, installation, operational tests, and sealant application shall be done in accordance with the following Boeing service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
747-52-2186, Revision 4, October 24, 1991	1-15, 19-50	4	October 24, 1991.
	16-18	3	January 25, 1990.
747-52A2233, August 29, 1991	1-76	Original	August 29, 1991.
Notice of Status Change	1	Original	November 21, 1991.
747-52A2233 NSC 1 November 21, 1991	2	(This page is not dated)	

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 14, 1993 (58 FR 19322, April 14, 1993). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment is effective May 14, 1993.

Issued in Renton, Washington, on May 13, 1993.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-11879 Filed 5-18-93; 8:45 am]

BILLING CODE 4910-13-P

Coast Guard

33 CFR Parts 100 and 165

[CGD 93-023]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between January 1, 1993 and March 31, 1993, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard district regulations that were established and terminated between January 1, 1993 and March 31, 1993, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G-LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Docket Clerk Specialist, Marine Safety Council at (202) 267-1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones are established around areas where there has been a marine casualty or when a

vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or an event occurs without advance notice. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent regulations are not included in this list. They are published in their entirety in the **Federal Register**. Temporary regulations are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1993 to March 31, 1993, unless otherwise indicated.

Docket #	Location	Type	Effective date
1-93-015	Winter Storm March 13, 1993	Safety	13 Mar 93.
1-93-016	Vessel Grounding, East River	Safety	14 Mar 93.
7-93-01	Hillsborough Bay	Special	7 Feb 93.
7-93-08	Ft. Pierce, FL	Special	27 Mar 93
	Captain of the Port Regulations		
Baltimore 93-05-04	Potomac River	Safety	16 Jan 93.
Baltimore 93-05-05	Potomac River	Security	17 Jan 93.
Charleston 93-13	Cooper River, SC	Safety	16 Mar 93.
Charleston 93-14	Murrell's Inlet Can/AM	Safety	18 Mar 93.
Jacksonville 93-12	St. John's River	Safety	20 Mar 93.
LA/LB 93-01	Port of Long Beach	Security	07 Jan 93.
LA/LB 93-02	Port of Long Beach	Security	07 Jan 93.
Louisville 93-01	Ohio River	Safety	07 Mar 93.
Louisville 93-02	Ohio River	Safety	26 Mar 93.
Miami 93-17	Port Everglades, FL	Safety	22 Mar 93
Memphis 93-01	Lower Mississippi River	Safety	31 Jan 93.
Paducah 93-01	Cumberland River	Safety	10 Feb 93.
Paducah 93-02	Upper Mississippi River	Safety	07 Mar 93.
Paducah 93-03	Upper Mississippi River	Safety	07 Mar 93.
Pittsburgh 93-01	Monongahela River	Safety	08 Feb 93.
Pittsburgh 93-02	Ohio River	Safety	31 Mar 93.
San Diego 93-02	San Diego Bay	Safety	05 Mar 93.
San Francisco 93-01	San Francisco Bay	Safety	15 Jan 93.
Southeast Alaska 93-01	Dixon Entrance	Safety	15 Feb 93.
St. Louis 92-13	Illinois River	Safety	05 Jan 93
St. Louis 93-02	Upper Mississippi	Safety	04 Jan 93.
St Louis 93-06	Upper Mississippi	Safety	16 Jan 93.
Tampa 92-126	Mullet Key Channel	Safety	10 Dec 92.
Tampa 92-127	Hillsborough Channel	Safety	10 Dec 92.
Tampa 92-128	Egmont Channel	Safety	10 Dec 92.

T. R. Cahill,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 93-11862 Filed 5-18-93; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 91-11A]

General Provisions—Computer Shareware Registry

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations concerning a registry for documents pertaining to computer software and procedures for donating copies of public domain software. The Judicial Improvements Act of 1990 authorized the creation of these new systems of public records. The registry is intended to provide a public record of legal documents pertaining to shareware.

EFFECTIVE DATE: May 19, 1993.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Public Law 101–650, 104 Stat 5089 (1990) containing several provisions affecting the copyright law. Section 805 of that Act authorized the creation of a registry of documents "designated as pertaining to computer shareware." In addition, the act authorized the establishment of a voluntary system of deposit of public domain software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Section 805 of the Judicial Improvements Act was not codified in the copyright law, and therefore the provisions creating these new systems of records are not codified in title 17.

The provision creating the shareware registry accompanied legislation creating a rental right for computer programs. During legislative deliberations over creating the rental right, concerns were raised that recognition of such a right might adversely affect the shareware industry. The establishment of the shareware registry addressed this concern.

Shareware is a descriptive term applying to a unique way of marketing copyrighted computer programs. Under a shareware system of marketing, the copyright owner of the computer program permits wide distribution of disks embodying the program in order to allow potential users the opportunity for testing and review. The licensing terms extended to distributors to the disks vary. If a person who has received a disk embodying the program decides to use the software, then that person is required to register the use with the author and pay a registration fee. Authors obtain their income through these registration fees, and, in general, the registration fees are lower than the purchase price for a similar program through commercial channels.

The shareware system of marketing software is an increasingly popular way for authors of computer software to enter the software market. The computer shareware registry is intended as a means for notifying the public of the licensing terms applicable to individual programs marketed on a shareware basis.

2. Interim Regulations

The interim regulation was published in the **Federal Register** on October 8, 1991. 56 FR 50657. It was generally patterned after the Copyright Act's section 205 recordation system, title 17 U.S.C. In order to record documents in the Registry, the documents were required to be labeled "Documents Pertaining to Computer Shareware." The interim regulation identified such documents as meaning "licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware."

Documents which are not designated as pertaining to computer shareware are treated as section 205 recordations, even if they involve computer programs marketed on a shareware basis. In addition, documents transferring ownership of the rights under copyright of computer programs marketed on a shareware basis must be recorded as section 205 transfers.

Documents recorded in the Computer Shareware Registry are maintained in a system separate from ordinary section 205 copyright documents. The catalog records of shareware documents cannot be found by searching the Copyright Office History Documents (COHD) files.

With respect to the donation of public domain software, the interim regulations designated such gifts to be directed to the Exchange and Gift Division of the Library of Congress. The regulation further specified several conditions for acceptance of the donation.

3. Comments and Modifications

The Copyright Office received one comment on the interim regulation; that comment was submitted by the Association of Shareware Professionals (ASP). In general terms, the ASP supported the interim regulation. However, the ASP did suggest three modifications, two of which have been adopted.

The interim regulations described shareware as programs "distributed with relatively few restrictions." ASP argued that such a reference might create a bias against full enforcement of shareware copyrights, and that shareware copyright owners were entitled to all the rights given to other copyright owners under the Copyright Act. The Copyright Office agrees, and accordingly has deleted that reference in the final regulation.

As regarding recordable documents, the interim regulations established a preference for copies, rather than originals, and contained a requirement that the documents contain a signature of the computer program owner. The preference for copies was written into the interim regulation because, unlike section 205 recordations, the Copyright Office did not intend to return documents submitted for recordation in the Computer Shareware Registry.

ASP criticized the preference for copies containing a signature, pointing out that unlike transfers of ownership which are conveyed by a signed document, shareware licensing agreements, traditionally do not contain the signature of the licensee. Accordingly, the Copyright Office has modified the reference to signed copies.

The third suggestion of ASP was that the Copyright Office either adopt a special form or guidelines governing registrable shareware documents. This portion of ASP's comments expressed the concern that recorded documents might become permanently binding upon shareware owners, and might therefore inhibit later modification of licensing terms.

The legislation creating the shareware registry was not clear as to the legal effect of recording documents in the registry, leaving the matter within the discretion of the courts. For this reason, the Copyright Office is hesitant to offer "advice" on the contents of documents filed in the registry since only courts could construe the legal significance of such recordations. To date, the Copyright Office has received only one document for recordation in the Computer Shareware Registry.

Accordingly, the Copyright Office will not adopt at this time the ASP suggestions regarding a special form or content guidelines.

4. Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

[1] The Copyright Office was not subject to the Administrative Act before 1976, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act [i.e. "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits]. [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Computer shareware registry; Computer programs, copyright.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Section 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.26 is also issued under Public Law 101–650, 104 Stat. 5089, 5436–37

2. Section 201.26 is revised to read as follows:

§ 201.26 Recordation of Documents Pertaining to Computer Shareware and Donation of Public Domain Computer Software.

(a) *General.* This section prescribes the procedures for submission of legal documents pertaining to computer shareware and the deposit of public domain computer software under section 805 of Public Law 101–650, 104 Stat. 5089 (1990). Documents recorded in the Copyright Office under this regulation will be included in the Computer Shareware Registry. Recordation in this Registry will establish a public record of licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware. Documents transferring the ownership of some or all rights under the copyright law of computer shareware and security interests in such software should be recorded under 17 U.S.C. 205, as implemented by § 201.4.

(b) *Definitions*—(1) The term *computer shareware* is accorded its customary meaning within the software industry. In general, shareware is copyrighted software which is distributed for the purposes of testing and review, subject to the condition that payment to the copyright owner is required after a person who has secured a copy decides to use the software.

(2) A *documented designated as pertaining to computer shareware* means licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware.

(3) *Public domain computer software* means software which has been publicly distributed with an explicit disclaimer of copyright protection by the copyright owner.

(c) *Forms.* The Copyright Office does not provide forms for the use of persons recording documents designated as pertaining to computer shareware or for the deposit of public domain computer software.

(d) *Recordable Documents*—(1) Any document clearly designated as a "Document Pertaining to Computer Shareware" and which governs the legal relationship between owners of computer shareware and persons associated with the dissemination or other use of computer shareware may be recorded in the Computer Shareware Registry.

(2) Submitted documents may be a duplicate original, a legible photocopy, or other legible facsimile reproduction of the document, and must be complete on its face.

(3) Submitted documents will not be returned, and the Copyright Office requests that if the document is considered valuable, that only copies of that document be submitted for recordation.

(4) The Copyright Office encourages the submission of a machine-readable copy of the document in the form of an IBM–PC compatible disk, in addition to a copy of the document itself.

(e) *Fee.* For a document covering no more than one title, the basic recording fee is $20. An additional charge of $10 is made for each group of not more than 10 titles. For these purposes the term "title" refers to each computer shareware program covered by the document.

(f) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. The submission will be retained and filed by the Copyright Office, and may be destroyed at a later date after preparing suitable copies, in accordance with usual procedures.

(g) *Donation of public domain computer software.* (1) Any person may donate a copy of public domain computer software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Decision as to whether any public domain computer software is suitable for accession to the collections rests solely with the Library of Congress. Materials not selected will be disposed of in accordance with usual procedures, including transfer to other libraries, sale, or destruction. Donation of public domain software may be made regardless of whether a document has been recorded pertaining to the software.

(2) In order to donate public domain software, the following conditions must be met:

(i) The copy of the public domain software must contain an explicit disclaimer of copyright protection from the copyright owner.

(ii) The submission should contain documentation regarding the software. If the documentation is in machine-readable form, a print-out of the documentation should be included in the donation.

(iii) If the public domain software is marketed in a box or other packaging, the entire work as distributed, including the packaging, should be deposited.

(iv) If the public domain software is copy protected, two copies of the software must be submitted.

(3) Donations of public domain software with an accompanying letter of explanation must be sent to the following address: Gift Section, Exchange & Gift Division, Library of Congress, Washington, DC 20540.

Dated: April 22, 1993.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 93–11779 Filed 5–18–93; 8:45 am]

BILLING CODE 1410–07–M

taken by the Office are not subject to APA–FOIA requirements.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF44

Diseases Associated With Service in the Republic of Vietnam

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases even though there is no

record of the disease during service. This amendment is necessary because Congress has added certain diseases associated with military service in the Republic of Vietnam during the Vietnam era to those diseases subject to presumptive service connection. The intended effect of this amendment is to assure that the regulations accurately reflect all the conditions to which presumptive service connection may be applied.

EFFECTIVE DATE: This amendment is effective February 6, 1991, the date the legislation was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.307 and 3.309 in the **Federal Register** of July 10, 1992 (57 FR 30707-08). Interested persons were invited to submit written comments, suggestions or objections on or before August 10, 1992. We received four comments, one from a member of Congress, one from the American Legion, and two from private individuals.

Two commenters stated that the proposed rule was confusing, and recommended that the regulation be made understandable.

Since these commenters did not indicate what was confusing about the proposed rule and did not submit specific recommendations to make the proposed rule, in their view, understandable, VA cannot reply in detail. We believe, however, that the regulatory language captures the intent of Congress when it enacted the Agent Orange Act of 1991, Public Law 102-4, 105 Stat. 11 (1991), by providing service connection for a veteran who served in Vietnam during the Vietnam era and subsequently develops one of the specified conditions.

Another commenter submitted statements and other documentation to support his contention that other conditions, to include birth defects, should be recognized by VA as resulting from exposure to herbicides containing dioxin.

The scope of this rulemaking is limited to implementing the statutory presumptions specifically established by Congress in Public Law 102-4. Although Public Law 102-4 authorizes VA to establish presumptive service connection for additional conditions which it determines are associated with exposure to dioxin, we may do so only after receiving the advice and recommendations of the National Academy of Sciences (NAS). NAS will submit its first report and recommendations by July 31, 1993, and we cannot propose regulations providing service connection for conditions not specified in Public Law 102-4 until we receive and evaluate the NAS report. It should be noted, however, that to compensate a veteran for the disabilities of another person, including the birth defects of a child, is beyond VA's authority and would require enabling legislation.

Two commenters expressed concern that the regulatory list of conditions which VA considers to be soft-tissue sarcomas for the purpose of implementing Public Law 102-4 does not include all soft-tissue sarcomas. The first commenter, a member of the United States Senate, implied that the listing that appears at 38 CFR 3.311a(c)(2) is a list of only those soft-tissue sarcomas which VA considers related to dioxin exposure rather than a listing of all soft-tissue sarcomas, and stated that Congress intended to compensate "each sarcoma" not expressly excluded by Public Law 102-4. The second commenter submitted a histological classification of soft-tissue tumors compiled by Dr. Franz Enzinger and Dr. Sharon W. Weiss which is contained in a manuscript entitled Soft Tissue Tumors, Second Edition, published by C. V. Mosby Co., 1988, and recommended that all of those tumors be included in the final regulation.

VA does not concur. Section 2 of Public Law 102-4 added 38 U.S.C. 1116 to establish a presumption of service connection for veterans with service in the Republic of Vietnam during the Vietnam era who subsequently develop, to a degree of 10 percent or more, "each *soft-tissue* sarcoma" (emphasis added) except osteosarcoma, chondrosarcoma, Kaposi's sarcoma, and mesothelioma. The plain language of the statute is on its face more restrictive than the interpretation which the first commenter urges us to adopt.

The term "soft-tissue sarcoma" is an imprecise term and there is no standard list of conditions which is universally accepted within the medical community as a definitive listing of "soft-tissue sarcomas". It should be pointed out, however, that not all sarcomas are "soft-tissue" sarcomas. Furthermore, some of the conditions, e.g. malignant schwannoma, malignant mesenchymoma, etc., which VA considers to be soft-tissue sarcomas do not contain the word "sarcoma" in their histological classifications. VA has previously addressed the issue of what the term soft-tissue sarcoma encompasses for purposes of implementing Public Law 98-52 (See the **Federal Register** of February 25, 1991 (56 FR 7632-34), the **Federal Register** of October 15, 1991 (56 FR 51651-53) and the **Federal Register** of July 10, 1992 (57 FR 30707-08)).

Based upon advice from the Veterans Advisory Committee on Environmental Hazards (VACEH) and the Veterans Health Administration (VHA), the Secretary concluded in those prior rulemakings that soft-tissue sarcomas should be classified by tumor type rather than tumor location and further, that in order to be recognized as "soft-tissue" sarcomas by VA, tumors must be malignant and arise from tissue of mesenchymal origin, including muscle, fat, blood or lymph vessels, or connective tissue (but not cartilage or bone), but that tumors of infancy or childhood, and those having a strong, known causal association with a specific etiology should not be included. The list of tumors which meet those criteria was published as part of the revision to 38 CFR 3.311a(c).

To implement the provisions of Public Law 102-4, we have cited in 38 CFR 3.309(e) the list of soft-tissue sarcomas that appears at § 3.311a(c)(2) and have augmented it with the following tumors: Extraskeletal Ewing's sarcoma, congenital and infantile fibrosarcoma, and malignant ganglioneuroma. These additional soft-tissue sarcomas are generally considered tumors of infancy and childhood which rarely, if ever, occur initially in an individual old enough to have been accepted for military service. They have been included in § 3.309(e), however, in order to satisfy the requirements established by the statutory language of Public Law 102-4.

Many of the tumors on the list submitted by the second commenter do not meet the criteria announced by VA. A large percentage of them, for example, are classified in the list itself as benign conditions and are thus outside the parameters established by VA. Neither of the commenters has objected to VA's criteria, indicated specific conditions which they believe meet those criteria but are not included in the regulation, or offered a reasonable alternative to those criteria for VA to consider. The Secretary has therefore concluded that the announced criteria are appropriate and that inclusion of additional conditions from the commenter's list is not warranted. In the future, should we determine that there are additional conditions which satisfy those criteria, we will amend the regulations accordingly.

One commenter stated that it is not logical to provide presumptive service connection for each soft-tissue sarcoma becoming manifest to a degree of 10 percent or more, and that there are no standards to evaluate the severity of soft-tissue sarcomas.

VA does not concur. The requirement that a soft-tissue sarcoma manifest itself to a degree of ten percent or more is a statutory requirement which VA has no authority to alter. Furthermore, those portions of VA's Schedule for Rating Disabilities dealing with soft-tissue sarcomas (38 CFR 4.73 (diagnostic code 5329), 4.104 (diagnostic code 7123) and 4.124a (diagnostic code 8540)) direct that a 100% evaluation be assigned for any malignancy which requires surgery, chemotherapy or radiation treatments. In practice, this means that when a soft-tissue sarcoma is diagnosed it will be rated as 100% disabling during treatment and for a specified period after surgery or other treatments have been terminated. Since such a condition will be evaluated totally disabling from the date it is discovered, the problem which the commenter anticipates cannot occur.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted without amendment.

The Secretary hereby certifies that this regulatory amendment 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. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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 Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 17, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.307, the heading is revised, and new paragraph (a)(6) and its authority citation are added to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with service in the Republic of Vietnam; wartime and service on or after January 1, 1947.

(a) * * *

(6) *Disease associated with service in the Republic of Vietnam.* The diseases listed in § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service in Vietnam during the Vietnam era, except that chloracne or another acneform disease consistent with chloracne shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(Authority: 38 U.S.C. 501(a) and 1116)

* * * * *

3. In § 3.307(a) introductory text, the first sentence, remove the words "or prisoner of war related disease", and add, in their place, the words ", prisoner of war related disease, or a disease associated with service in the Republic of Vietnam". In § 3.307(a)(1), after the words "§ 3.309(c)" add the words "and (e)".

4. In § 3.309, new paragraph (e) and its authority citation are added to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(e) *Diseases associated with service in the Republic of Vietnam.* If a veteran, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era, the following diseases shall be service-connected if the requirements of § 3.307(a)(6) are satisfied even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied:

Chloracne
Non-Hodgkin's lymphoma
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Note: The term "soft-tissue sarcoma" includes those tumors listed at § 3.311a(c)(2). For the purposes of this section only, the following tumors of infancy and childhood, although rarely if ever occurring in an individual old enough to have been accepted for military service, shall also be included:

Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

(Authority: 38 U.S.C. 501(a) and 1116)

[FR Doc. 93–11817 Filed 5–18–93; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 3

RIN 2900–AF84

Direct Service Connection (Post-traumatic Stress Disorder)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations to establish the extent of evidence required to establish service connection for post-traumatic stress disorder (PTSD). This regulation is necessary because, although VA has issued procedural guidelines on this subject, it is a substantive issue which should be addressed by regulation. The intended effect of this amendment is to establish a regulatory basis for current VA policy.

EFFECTIVE DATE: This amendment is effective May 19, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.304 to establish the extent of evidence required to establish service connection for PTSD in the **Federal Register** of August 5, 1992 (57 FR 34536–37, as corrected by 57 FR 38095). Interested persons were invited to submit written comments, suggestions or objections on or before September 4, 1992. We received comments from a representative of the American Psychiatric Association and from an interested individual.

The representative of the American Psychiatric Association endorsed the proposed regulation, stating that it will ensure that VA does not require unreasonable proof of inservice stressors in PTSD claims.

The other commenter contended that according to the United States Court of Veterans Appeals (COVA), corroboration of a claimed inservice stressor is mandatory to establish service-connection for PTSD and suggested that the rule be reproposed to require documentation of any claimed inservice stressor.

In the COVA case at issue (see *Wood* v. *Derwinski*, 1 Vet. App. 190 (1991) and 1 Vet. App. 406 (1991)), the appellant alleged that during his military service in Vietnam he witnessed some emotionally traumatic incidents which eventually resulted in PTSD. In affirming a decision by the Board of Veterans Appeals that the claimant did not have service-connected PTSD, COVA noted that there was nothing whatever in the record to show that the claimant was engaged in combat with the enemy when the putative stressful events occurred. One incident which the veteran relied upon was entirely unrelated to combat; the other was the aftermath of a combat action in which he had not participated. VA had attempted to verify the occurrence of the claimed stressors, but had been unsuccessful. The commenter has construed the COVA decision as a judicial edict preventing VA from establishing service connection for PTSD in any case unless it is able to obtain absolute proof that the claimed in-service stressor actually occurred.

That conclusion is clearly erroneous. COVA did note that the *sine qua non* of establishing a PTSD claim is "some corroboration" of the claimed stressor, but Congress has undisputably granted the Secretary of Veterans Affairs the authority to prescribe regulations with respect to the nature and extent of proof and evidence required in order to establish entitlement to benefits (see 38 U.S.C. 501(a)). As an exercise of that authority, the Secretary has determined that in claims for PTSD involving stressors which occurred under specific circumstances such as combat or being held as a prisoner-of-war where events can never be fully documented, evidence establishing the claimed circumstances is sufficient to substantiate the occurrence of the claimed stressor. The regulation is fully consistent with COVA's ruling in *Wood*, with the Secretary's authority under the provisions of 38 U.S.C. 501(a), and with the provisions of 38 U.S.C. 1154(b), which directs VA to accept as evidence of service connection for conditions of veterans who engaged in combat, satisfactory evidence consistent with the circumstances, conditions, or hardships of such service even though there is no official record to substantiate the claim.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with a minor technical amendment to clarify that, in the case of a prisoner-of-war, VA would consider as conclusive evidence of an inservice stressor that the claimant had prisoner-of-war experience satisfying the requirements of 38 CFR 3.1(y), in the absence of evidence to the contrary. Additionally, the military citation name, Combat Infantry Badge, that appeared in the proposed rule was not correct. The final regulation contains the correct name for that citation, Combat Infantryman Badge.

The Secretary hereby certifies that this regulatory amendment 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. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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 Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 18, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.304, add new paragraph (f) and its authority citation to read as follows:

§ 3.304 Direct service connection: wartime and peacetime.

* * * * *

(f) Post-traumatic stress disorder. Service connection for post-traumatic stress disorder requires medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed inservice stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed inservice stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed inservice stressor. Additionally, if the claimed stressor is related to the claimant having been a prisoner-of-war, prisoner-of-war experience which satisfies the requirements of § 3.1(y) of this part will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed inservice stressor.

(Authority: 38 U.S.C. 1154(b))

[FR Doc. 93–11816 Filed 5–18–93; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 36

RIN 2900–AE19

Loan Guaranty: Servicing Procedures for Holders and Servicers of VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: To establish a regulatory standard for servicing VA guaranteed loans, the Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) by adding the loan servicing procedures which will be required of holders and servicers of VA guaranteed loans.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: On October 4, 1990, VA published in the **Federal Register** (55 FR 40682) proposed regulations setting forth the loan servicing procedures to be followed by holders and servicers of VA guaranteed loans. The regulations clarify for holders what is expected in the way of servicing. They also provide standards by which the adequacy of the servicing will be evaluated, and provide VA with a clear basis for imposing sanctions when appropriate. Please refer to the October 4, 1990, **Federal Register** for a complete discussion of the proposed regulations. The proposed regulations, through a scrivener's error, provided that the new servicing procedures would be located at § 36.4337 of this part. The correct reference is to § 36.4346. The erroneous citation has been corrected in this document.

Public comments were requested on the proposal, and VA received ten written comments. Comments were submitted by a legal aid society, three mortgage companies, one Savings and Loan, two associations representing lenders, one secondary market institution, a law firm, and a life insurance company.

The commenter from the legal aid society stated that lenders should be required to provide servicing to borrowers in default, beyond the servicing proposed in the regulations or the servicing conducted on conventional loans. VA's position is that the proposed regulations, together with existing VA regulations and policies on servicing, provide delinquent veteran-borrowers with ample opportunity to either reinstate their loans or to avoid foreclosure.

The same commenter also recommended that individual borrowers be given the right to halt foreclosure actions when they feel that the lender has not serviced the loan properly. We understand the basis for such a proposal, however, we believe that the matter of subjective interpretation by individuals as to what constitutes improper servicing would make the proposal administratively unworkable. At present, local VA offices provide delinquent borrowers with written notice of their options for reinstatement or avoidance of foreclosure and assist them with any problems they have with their lenders which they cannot resolve on their own.

Several commenters expressed concerns about the amendment of §§ 36.4280 and 36.4317 to require holders of VA-guaranteed loans to provide notice to the original veteran borrower and other liable obligors when a Notice of Intention to Foreclose has been provided to the Secretary. The commenters stated that additional unforeseen burdens and costs are being placed upon the holders by this requirement. They also requested clarification as to when noncompliance with this requirement would result in a partial or total loss of guaranty.

The requirement for notice applies to original veteran borrowers only when the original veteran borrower is a liable obligor. VA acknowledges that as a result of this amendment an additional burden and cost will be placed upon holders and estimates it will take an average of 15 minutes to perform each notification. Fifteen minutes should be sufficient time for reviewing instructions, researching data sources, gathering, organizing, completing and reviewing the collected information.

It will generally be considered that holders have made a reasonable effort for purposes of this amendment if the actions they have taken to complete the notification requirement are commensurate with VA estimates of what can be accomplished in 15 minutes, excluding those actions which would normally be performed in reviewing records and extracting information to be forwarded to the attorney being assigned the foreclosure. A reasonable effort would include: Searching the holder's automated and physical systems to identify the current or last known address of known obligors or to identify sufficient information to perform an automated skip-trace inquiry; conducting the skip-trace inquiry; obtaining the results of the inquiry; providing notice; and documenting the holder's file. Proposed §§ 36.4280 and 36.4317 are amended to add that a good faith effort to meet the notification requirement would include these actions.

Proposed §§ 36.4280 and 36.4317 have been revised to also apply the original obligor notice requirement to loans closed based on commitments issued after March 1, 1988. This is necessary because 38 U.S.C. 3714(a)(4)(B)(ii) sets forth conditions under which the Secretary can approve a loan assumption which would not otherwise be approved where the seller specifically agrees to remain liable for the loan.

One commenter expressed concern about the viability of providing notice to the original obligors by registered mail when most attempts at mailing are returned "not deliverable". This problem should be greatly reduced as a result of the addresses obtained through skip-traces.

One commenter stated that the requirement to notify the original obligors may act to delay foreclosure procedures. This is not the intent of the regulation. In no event should efforts to locate the original obligors cause postponement of foreclosure action, unless similar notice procedures are required under state law.

The same commenter also stated that 30 days to provide notice to the original obligors may be an insufficient amount of time when servicing transfers are taking place. The basic purpose of the notice is to satisfy reasonable due process considerations in order to avoid releasing the prior obligors from liability on the loan. Under the law of most states, this would entail providing notice within a relatively short time prior to foreclosure. Any denial of claim liability by VA is based on VA's inability to recover losses from original obligors because of the holder's failure to meet the due process requirement as is currently the case when provisions of § 36.4324(f) or 36.4325 (b) or (c) are applied.

Decisions with respect to partial or total loss of guaranty for non-compliance with these amendments are dependent upon the extent to which the holder's action or inaction increased the ultimate liability of the Secretary. Such decisions rest with the Director, Loan Guaranty Service in Washington, DC. VA anticipates that loan holders will be able to reasonably comply with this amendment by making reasonable attempts to provide the required notices. In the event issues arise which were not contemplated when the regulations were written or were not raised during

the comment period, VA will address those issues when they arise.

Sections 36.4216 and 36.4331 provide for the disqualification or suspension of lenders and holders of VA-guaranteed loans. They provide that suspension may result, among other reasons, from a failure to maintain adequate loan accounting records or to demonstrate proper ability to service loans adequately. These sections are being amended to require compliance with § 36.4278 or 36.4346, servicing procedures for holders.

Comments on the amendment of §§ 36.4216 and 36.4331 were to the effect that sanctions against holders should be used only if there is substantial non-compliance by a holder or when a pattern of refusal or failure to comply is evident. As a practical matter, we will not generally suspend a lender based on an isolated instance of failure to follow the servicing requirements. We are aware of the significant impact and grave consequences of suspension on lenders and holders of VA-guaranteed loans. We are concerned that VA's authority to suspend program participants be used judiciously and have provided for administrative due process in the regulations. While VA would normally apply sanctions only in instances of substantial non-compliance or where a pattern of failure to comply is evident, VA must have the administrative flexibility under the regulations to enforce sanctions in other circumstances as necessary (see 38 CFR part 44).

The remaining comments concerned §§ 36.4278 and 36.4346, Servicing procedures for holders. These sections are identical. Section 36.4278 applies to loans guaranteed by VA to veterans for the purchase of manufactured home loans and lots. Section 36.4346 applies to loans guaranteed by VA to veterans for the purchase of real estate. The following comments and responses apply equally to both sections. Most comments favored VA's efforts to prescribe the manner in which VA-guaranteed loans should be serviced and to define adequate servicing.

One comment was received with respect to §§ 36.4278(b)(1) and 36.4346(b)(1), which concern procedures for providing loan information to borrowers. It suggested that the requirement that the holder have a servicing office with access to loan account information within 200 miles of the property be deleted from the final regulations because "most servicing is done on a national basis out of a single servicing center, which means that no servicer maintains an office within 200 miles of the property securing a VA-guaranteed loan."

VA's amendment was patterned after the Department of Housing and Urban Development servicing requirement found in 24 CFR 203.508. We believe that mortgage holders have a responsibility to provide information to borrowers and also that holders should have flexibility in organizing and locating their servicing organizations. Maintaining a servicing office within 200 miles of the property is only one of two alternatives available to holders. The other alternative, § 36.4278(b)(2), provides for toll-free telephone service or for the acceptance of collect calls at an office capable of providing needed information.

Sections 36.4278(g) and 36.4346(g) pertain to collection actions of holders. Comments relating to at least one of the provisions of paragraphs (g)(1) through (g)(4) were received from three respondents. Concerns were expressed about the provisions that: (1) The holder provide a written delinquency notice if payment has not been received 17 days after the payment due date; (2) an effort to establish telephone contact be made by the holder; (3) a letter to the borrower from the lender be sent if payment is not received within 30 days after the due date when telephone contact has not been successful; and (4) face-to-face contact be made or attempted by the servicer. One of the commenters also stated that in lieu of VA's proposal, holders should have the option of making "smart" phone calls (selected calls based upon portfolio and loan experience) and that such calls should begin after the 25th day of delinquency.

VA has found that holders employ a variety of collection actions to ensure timely payment by borrowers. In some instances, holders begin collection actions seven days after the due date. Telephone calls are made to borrowers reminding them that the payment was due on the first of the month and that the borrower's prompt payment is appreciated. In other instances, holders send reminder notices that payment has not been received and that the due date was 10 days prior to the date of the notice. Similarly, many holders immediately send notices after the 15-day grace period has expired or begin telephone servicing at that time. The intensity of these efforts ranges from "soft" customer service reminders to more collection-oriented messages. As a result of reviewing various collection actions we have determined that the requirements of paragraphs (g)(1) through (g)(4) are customary and usual servicing practices, and VA is establishing these as base levels of performance for holders who service VA-guaranteed loans.

Concern was expressed over what will satisfy the requirement for attempting to conduct a face-to-face interview with the obligor. We believe that the requirement is satisfied, in cases when it is not actually accomplished, when a reasonable effort to arrange such an interview is made. VA's requirement on this point is not intended to be unreasonable or overly burdensome to the lender. An effort to arrange the interview via appropriate letters and telephone calls should satisfy the regulation.

One commenter suggested that the requirement for lenders to explain any failure to perform collection actions when reporting defaults be deleted. We believe that this is a simple requirement which will be effective in assuring that appropriate servicing actions are consistently taken. We do not agree that the quality control provisions alone adequately address this particular need.

Three respondents commented on §§ 36.4278(i) and 36.4346(i) which concern property inspections. The comments were to the effect that VA or the homeowner should reimburse holders for the cost of such inspections, that VA should differentiate between vacant and abandoned property, that VA should clarify what actions the holder should take to protect vacant and/or abandoned property not in title, and that when the property has been abandoned VA should consider extending the 15 day period holders have to begin liquidation on delinquent loans.

We have given further consideration to the matter of who should pay for property inspections, including the fact that the Department of Housing and Urban Development reimburses inspection costs in its insurance program(s). We have concluded that reasonable expenses for property inspections may be included in the total eligible indebtedness when a holder reports such indebtedness to VA in connection with a request for net value advice or the filing of a claim under loan guaranty. Section 36.4313 is amended accordingly.

Two commenters requested a clarification of VA's interpretation of vacant and abandoned property. VA's understanding of these terms is consistent with the customary usage in the real estate industry unless they are defined differently by local law. Consistent with customary usage, VA considers that a vacant property is one that is not occupied, generally for a temporary period. An abandoned property is one in which the owner has

declared that he or she has given up responsibility for the property, and custody of the property is relinquished permanently; or, upon an observation and evaluation of circumstances, it is reasonable to conclude that the owner has relinquished custody of the property permanently. There are numerous indicators, which when properly evaluated, support a conclusion that a property is abandoned. Such indicators include: written notice from the owner(s), discussions with the owner(s), property inspections, length of vacancy, property appearance, property condition, property open to trespass, turned off utilities, calls or discussions with neighbors or other interested parties, notices of code violations, police or fire reports, and notice of cancellation of hazard insurance.

Determining whether a property is abandoned calls for judgment based upon many factors and is the responsibility of the holder. Typically, when an inspection or other information reveals that a property is vacant, the holder should try to locate the borrower and determine the reason for the vacancy and make a determination as to whether the property is abandoned. If attempts at contact fail, the holder is expected to evaluate the circumstances and make a determination as to whether the property is abandoned.

One commenter requested clarification of the actions which the regulation requires the holder to take to preserve a vacant or abandoned property not in title. Inherent in performing the servicing of a loan is the prudent exercise of stewardship over the loan and collateral. While VA is guarantor and is at risk of loss, holders are equally at risk when the collateral diminishes in value due to physical deterioration of the property. Therefore, under these regulations, holders must make immediate arrangements to protect the property from vandalism and the elements, to the extent that the loan agreements and local laws permit such action, as soon as they know, reasonably should know, or reasonably should suspect and could readily learn, that the property is abandoned.

Commenters were also concerned about the requirement to report a property abandonment to the Secretary when a loan becomes 30 days delinquent and to initiate action under § 36.4280(e) or § 36.4317(a) within 15 days after the holder confirms the property is abandoned. For clarification purposes the following two examples of when these regulations require the 15 day notice are provided.

The first example is when a holder, in the course of servicing a loan, learns of circumstances in which a loan is in early default (30 to 60 days delinquent) and the property is vacant. Upon confirmation of the borrower's intentions and a property inspection, the holder determines that the property is abandoned. Under such circumstances these regulations will require the holder to provide notice within 15 days after determining that the property has been abandoned. The notice would be similar to the notice of default required under § 36.4280(a) or § 36.4315(a). However, such notice would be provided at an earlier date than was previously required. Additionally, the holder must initiate action under either § 36.4280(e) or § 36.4317(a) within 15 days after it has determined that a property is abandoned.

The second example is when a holder has already provided notice of the default to the Secretary and subsequently determines that the property is abandoned. Under such circumstances these regulations require the holder to provide notice, preferably by filing VA Form 26–6851, Notice of Intention to Foreclose, advising the Secretary of the abandonment. Accordingly, the holder must initiate action under either § 36.4280(e) or § 36.4317(a) within 15 days after determining that the property is abandoned. In either example above, the 30-day waiting period to begin liquidation action under § 36.4280 or § 36.4317 is not applicable.

One commenter states that providing notice of property abandonment at the time it occurs is unnecessary because the loan may later reinstate. We believe that a relatively small percentage of abandoned properties reinstate, and that notice of abandonment is imperative in order to ensure prompt foreclosure of these cases.

Concern was expressed that 15 days is inadequate for initiating action under either § 36.4280(a) or § 36.4317(a). We believe that 15 days is sufficient for holders to retrieve needed loan instruments from the custodian and initiate appropriate action.

One comment was received concerning the reporting requirements that holders must meet under §§ 36.4280(a), 36.4315, and 36.4317. These requirements include the Notice of Default or the Notice of Intention to Foreclose. The commenter suggested that because much of the information required is contained in the servicing history, holders should be permitted to attach this information to the forms instead of having to transcribe the information onto the forms. VA has generally accepted information in this format in the past and is agreeable to this proposal, providing that all required information is supplied when the reports are submitted. We also envision that at a future time, holder reporting will be made available in an electronic format.

Two respondents commented on §§ 36.4278(l) and 36.4346(l), Quality Control Procedures. One suggested that compliance with HUD quality control procedures should satisfy VA requirements. The other stated that the proposal would make it mandatory for holders to use and obtain data from others, that data may not be available to holders on the performance of VA-guaranteed loans, and that VA should periodically make delinquency data available to lenders.

With respect to the first comment VA would not object to a holder incorporating elements of HUD's quality control procedures into its quality control procedures for VA portfolios. VA would also encourage holders to extend their existing quality control procedures to include VA loans. However, we disagree with the second comment to the effect that information on VA loans may not be available. Title companies provide origination and foreclosure data to lenders. The Mortgage Bankers Association of America publishes its National Delinquency Survey on VA, FHA, and conventional loans. The regulations provide holders with considerable flexibility in evaluating their performance in relationship to a wide variety of foreclosure and default data which are, or may become, available. We believe that quality control procedures and such analyses provide a continuous and organized effort to improve the efficiency and effectiveness of a holder's servicing operation and, therefore, holders are required by these regulations to perform such reviews at least annually.

One commenter expressed concern that interpretation of VA rules and procedures would not be uniformly applied by each VA field office. A uniform application is always our goal, although it is sometimes limited by the differences in local laws. Any substantive variance in interpretation by a VA field office which is not due to differences in local law should be brought to the attention of local VA managers. If the matter cannot be resolved in this manner, the lender should contact program officials at VA Central Office.

One commenter suggested that VA should include a regulation which permits VA to waive applicability of these regulations. We do not believe this

is necessary because under existing regulations (e.g., § 36.4325) any "punitive" aspects of these regulations would only be invoked in the event that VA's liability could be increased by the lender's action or failure. Moreover, existing regulation § 36.4335 authorizes VA to relieve undue prejudice to a holder or other party provided the vested rights of any other parties are not thereby affected. This commenter also recommended that specific authorization be given which permits a servicer to enter into subservicing arrangements. VA does not regulate servicing contracts and therefore such authorization is not necessary.

Several comments were received concerning proposed §§ 36.4278(d)(e) and 36.4346(d)(e). These sections deal with change of servicer and the handling of tax and insurance escrow accounts. One commenter pointed out that a proposed law would affect the proposed regulations. Public Law 101–625, The National Affordable Housing Act of 1990, was signed by the President on November 28, 1990, and we have amended §§ 36.4278(d)(e)(f) and 36.4346(d)(e)(f) to comply with the law, which provides that change of servicing and maintenance of escrow accounts be governed by the Real Estate Settlement Procedures Act.

We have also amended §§ 36.4331 and 36.4216 to provide for the possibility of suspension of lenders and holders for failure to comply with other laws or regulations which affect the VA Program.

The Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Few VA loans are held and serviced by small entities. Furthermore, the servicing requirements in the regulations are based on practices usual and customary in the industry and are consistent with HUD practices. Meeting the requirements to provide a notice of default to original veteran obligors and a report of property abandonment to the Secretary will have only a slight impact on holders.

The Secretary has also determined that the regulatory amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other 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 information collection requirements contained in §§ 36.4278, 36.4317, and 36.4346 were approved by the Office of Management and Budget (OMB) under control number 2900–0530.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

These amendments are made final under the authority granted the Secretary by section 501(a) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

Approved: March 29, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. Section 36.4202 is amended by revising the definition of the term *Holder* to read as follows:

§ 36.4202 Definitions.

* * * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.

* * * * *

§ 36.4216 [Amended]

3. Section 36.4216 is amended by adding to the first sentence of paragraph (a) the words "as required under § 36.4278 and any other requirement of 38 U.S.C. and the regulations" after the word "adequately".

4. Section 36.4217 is revised to read as follows:

§ 36.4217 Delivery of notice.

Any notice required by the § 36.4200 series to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4221(b) and delivered, by mail or otherwise, to the VA office at which the guaranty was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by the § 36.4200 series. This section does not apply to legal process. (See § 36.4282.)

5. Section 36.4276 is revised by redesignating paragraph (b)(7) as paragraph (b)(8) and by adding a new paragraph (b)(7) to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(b) * * *

(7) Reasonable and customary costs of property inspections, * * *

6. Section 36.4278 is added to read as follows:

§ 36.4278 Servicing procedures for holders.

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Within 60 days after the end

of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) *Escrow accounts.* A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) *System for servicing delinquent loans.* In addition to the requirements of the Real Estate Settlement Procedures Act concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and,

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) *Collection actions.* (1) Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum, the holder's collection procedures must include the following actions:

(i) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(ii) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(iii) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.

(iv) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 38 CFR 36.4216.

(h) *Conducting interviews with delinquent borrowers.* When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following facts:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The present income and employment of the borrower(s);

(3) The current monthly expenses of the borrower(s) including household and debt obligations;

(4) The current mailing address and telephone number of the borrower(s); and,

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) *Property inspection.* (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that a property securing a loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under 36.4280(e) within 15 days after the holder confirms the property is abandoned.

(j) *Collection records.* The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the

Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and

(4) The date and result of each property inspection.

(k) *Reporting to the Secretary.* A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4280.

(l) *Quality control procedures.* No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate the effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in various reports published by the industry, investors and others; and

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(m) Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Approved by the Office of Management and Budget under Control Number 2900–0530)

7. Section 36.4280 is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

§ 36.4280 Reporting of defaults.

* * * * *

(e) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, repossess the security, or accelerate the loan, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by certified mail to the Secretary of a notice of intention to take such action; provided, that immediate action as required under 38 CFR 36.4278(i) may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to extraordinary waste or hazard.

(f) The notice required under subparagraph (e) of this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty pursuant to VA Regulation 36.4286(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include:

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last address of the original veteran and any other liable obligors;

(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;

(3) Conducting the trace inquiry using an in-house credit reporting terminal;

(4) Obtaining the results of the inquiry;

(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and

(6) Documentation of the holder's records.

8. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

9. Section 36.4301 is amended by revising the definition of the term *Holder* to read as follows:

§ 36.4301 Definitions.

* * * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.

* * * * *

10. Section 36.4313 is revised by redesignating paragraph (b)(7) as paragraph (b)(8) and by adding a new paragraph (b)(7) to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(7) Reasonable and customary costs of property inspections, * * *

11. Section 36.4317 is revised to read as follows:

§ 36.4317 Notice of intention to foreclose.

(See also § 36.4319.) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Secretary of a notice of intention to take such action: Provided, That

(a) Immediate action as required under 38 CFR 36.4346 (i), may be taken if the property to be affected thereby has been abandoned by the debtor or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment);

(b) Any right of a holder to repossess personal property may be exercised without prior notice to the Secretary; but notice of any such action taken shall be given by certified mail to the Secretary within ten days thereafter; and

(c) The notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include, but is not limited to:

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last known address of the original veteran and any other liable obligors;

(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;

(3) Conducting the trace inquiry using an in-house credit reporting terminal;

(4) Obtaining the results of the inquiry;

(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and,

(6) Documentation of the holder's records.

(Approved by the Office of Management and Budget under Control Number 2900–0530)

12. Section 36.4331 is amended by adding to the first sentence of paragraph (a) the words "as required under § 36.4346 and any other requirements of 38 U.S.C. and the regulations" after the word "adequately".

13. Section 36.4332 is revised to read as follows:

§ 36.4332 Delivery of notice.

Any notice required by §§ 36.4300 to 36.4375 to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4342 and delivered, by mail or otherwise, to the VA office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by §§ 36.4300 to 36.4375. This paragraph does not apply to legal process.

14. Section 36.4346 is added to read as follows:

§ 36.4346 Servicing procedures for holders.

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) *Escrow accounts.* A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) *System for servicing delinquent loans.* In addition to the requirements of the Real Estate Settlement Procedures Act, concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) *Collection actions.* (1) Holders shall employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum the holder's collection procedures must include the following actions:

(i) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(ii) An effort, concurrent with the written delinquency notice to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(iii) A letter to the borrower(s) if payment has not been received within

30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.

(iv) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 38 CFR 36.4331.

(h) *Conducting interviews with delinquent borrowers.* When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The present income and employment of the borrower(s);

(3) The current monthly expenses of the borrower(s) including household and debt obligations;

(4) The current mailing address and telephone number of the borrower(s); and

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) *Property inspections.* (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and,

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that the property securing the loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under § 36.4317(a) within 15 days after the holder confirms the property is abandoned.

(j) *Collection records.* The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and,

(4) The date and result of each property inspection.

(k) *Reporting to the Secretary.* A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to §§ 36.4315 and 36.4317.

(l) *Quality control procedures.* No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others; and,

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(m) Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Approved by the Office of Management and Budget under Control Number 2900-0530)

[FR Doc. 93-11818 Filed 5-18-93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3574/R1194; FRL-4580-8]

RIN 2070-AB78

Pesticide Tolerance for Terbufos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a 2-year time-limited import tolerance for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) coffee beans. This regulation to establish a maximum permissible level for residues of the insecticide/nematicide in or on the commodity was requested in a petition submitted by the American Cyanamid Co.

EFFECTIVE DATE: This regulation becomes effective May 19, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 8E3574/R1194], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13236), EPA issued a proposed rule that gave notice that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 8E3574 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for the

combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.05 part per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.352, by adding new paragraph (b), to read as follows:

§ 180.352 Terbufos; tolerances for residues.

* * * *

(b) A time-limited tolerance to expire (*insert date 24 months after date of publication in the* **Federal Register**) is established for combined residues of the insecticide/nematicide terbufos (*S*-[(1,1-dimethyl)thio]methyl] *O,O*-diethyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity.

Commodity	Parts per million
Coffee beans	0.05

There are no U.S. registrations as of March 10, 1993 for coffee beans.

[FR Doc. 93-11873 Filed 5-18-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Parts 180, 185, 186

[PP 2F4076 & FAP 2H5626/R1185; FRL-4577-1]

RIN 2070-AB78

Food and Feed Additive Regulations and Exemption From the Requirement of a Pesticide Tolerance for the Microbial Pest Control Agent Metarhizium Anisopliae Strain ESF1

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule

SUMMARY: EPA is establishing food and feed additive regulations as well as an exemption from the requirement of a pesticide tolerance on all raw agricultural commodities regarding the use of the microbial pest control agent *Metarhizium anisopliae* strain ESF1 in food-handling establishments, feed-handling establishments, and greenhouses in accordance with certain prescribed conditions. EcoScience Corp. requested this regulation.

EFFECTIVE DATE: This regulation becomes effective on May 19, 1993.

ADDRESSES: Written objections, identified by the document control number [PP 2F4076 & FAP 2H5626/R1185], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Philip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 10, 1992 (57 FR 24645, 24656), EPA issued notices announcing that EcoScience of Worcester, MA, had submitted a pesticide petition (PP 2F4076) and a food/feed additive petition (FAP 2H5626) to EPA proposing that 40 CFR part 180 be amended by establishing a regulation for permanent exemption from the requirement of a tolerance for *Metarhizium anisopliae* in or on all raw agricultural commodities and that 40 CFR parts 185 and 186 be amended by exempting *Metarhizium anisopliae*, when used to control cockroaches, from the requirement of a tolerance in or on processed food and animal feed.

On July 23, 1992, EcoScience amended both petitions to limit the uses covered by the proposed exemption from the requirement of a tolerance and food and feed additive regulation to traps and bait stations. In publishing these food and feed additive regulations and tolerance exemption, EPA chose to use the broader term "attractant stations" in place of the terms "traps and bait stations." This was done because risk concerns remain the same and the term "attractant stations" includes traps and bait stations as well as other products that attract target pest(s) to stations containing the active ingredient. EPA chose to limit the applicability of these regulations to *Metarhizium anisopliae* strain ESF1 because different strains of *Metarhizium anisopliae* may have differing results in toxicity/pathogenicity studies.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. The scientific data submitted in the petitions and other relevant material have been evaluated.

The toxicological data considered in support of the exemption from the requirement of a tolerance and food and feed additive regulations include an acute oral toxicity/pathogenicity study in the rat, an acute pulmonary toxicity/pathogenicity study in the rat, an acute intravenous toxicity/pathogenicity in the rat, a dermal toxicity study in the rabbit, and a primary eye irritation study in the rabbit, as well as data indicating that *Metarhizium anisopliae* is unable to grow at or above 95 degrees F.

The results of the toxicity/pathogenicity studies show no toxic, pathogenic, or adverse effects. These studies demonstrated that rodents can effectively clear the fungus from their bodies even after it is injected at high amounts. The results of the temperature growth study show that *Metarhizium anisopliae* cannot grow at mammalian body temperatures and should not be able to grow in the organs or tissues of humans. No toxicity or irritation was observed in the dermal study, and only grade-one erythema and edema were present in most animals at the 1- and 24-hour evaluation periods in the 7-day primary eye irritation study.

Certain strains of *Metarhizium anisopliae* produce a class of mycotoxins called destruxins (insecticidal cyclodepsipeptides). There are no known reports of destruxins causing adverse mammalian health effects; however, other mycotoxins are known to adversely affect human health. As stated earlier, no toxic, pathogenic, or toxic adverse effects were observed in any of the submitted studies. Based on these studies, the Agency believes that the form of *Metarhizium anisopliae* strain ESF1 that was tested and is to be sold in commerce did not contain destruxins, or it posed no significant adverse effects to human health if destruxins were present. EPA makes this conclusion from the assumption that mycotoxins that may adversely affect human health would show acute adverse effects in toxicity/pathogenicity studies. Since different environmental conditions may affect destruxin production, lack of acute effects in mammalian toxicity/pathogenicity studies alone could not preclude the potential for destruxin production in the target insects. However, since the LT_{50s} (time required to kill 50 percent of the population) for strain ESF1 in the German cockroach and the house fly are 10 days and greater than 6 days, respectively, there is little or no chance that insects infected with strain ESF1 from the attractant stations would contain destruxins. Destruxin-producing strains of *Metarhizium anisopliae* tend to cause faster insect mortality due to destruxin toxicity. The mode of action for strains not producing destruxins appears to be primarily from proliferation of the fungus and subsequent death of the infected insect.

In the unlikely event that insects exposed to strain ESF1 in attractant stations contain destruxins, and such insects before death contaminate foods or feeds processed or stored in a food- or feed-handling establishment, such foods may be considered adulterated under provisions of 21 U.S.C. 342(a)(3) and be subject to regulatory sanctions by the Food and Drug Administration (FDA). To avoid potential FDA enforcement action, all food-handling facilities using pesticides, including those that use *Metarhizium anisopliae* strain ESF1 for insect control, should make every effort to protect foods and feeds from contamination with insects or insect fragments.

Reference Dose (RfD) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrate that this biological control agent is not toxic to humans. Because no tolerance level is set for this microbial pest control agent, the requirement for an analytical method for enforcement purposes is not applicable to these food additive regulations and exemption from the requirement of a tolerance.

Based on the information cited above, the Agency has determined that the use of *Metarhizium anisopliae* under the conditions of this regulation will be safe and will protect the public health. The pesticide is considered useful for the purpose for which the tolerance exemption and food and feed additive regulations are sought and capable of achieving the intended physical or technical effect. Therefore, the tolerance and food and feed additive regulations are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185, and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding new § 180.1116, to read as follows:

§ 180.1116 Metarhizium anisopliae strain ESF1; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for the microbial pest control agent *Metarhizium anisopliae* strain ESF1 on all raw agricultural commodities in accordance with the following prescribed conditions:

(a) Application shall be limited solely to placement of attractant stations

containing Metarhizium anisopliae strain ESF1.

(b) To ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 185.4035, to read as follows:

§ 185.4035 Metarhizium anisopliae strain ESF1.

A food additive regulation is established allowing the use of the microbial pest-control agent *Metarhizium anisopliae* strain ESF1 as follows:

(a) *Metarhizium anisopliae* strain ESF1 may be present as a residue in food items as a result of application of *Metarhizium anisopliae* strain ESF1 in food-handling establishments, including food service, manufacturing, and processing establishments such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat-slaughtering and packing plants, and canneries where food and food products are held, processed, and served.

(b) Application shall be limited solely to placement of attractant stations containing *Metarhizium anisopliae* strain ESF1 in food-handling establishments.

(c) To ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.4035, to read as follows:

§ 186.4035 Metarhizium anisopliae strain ESF1.

A feed additive regulation is established allowing the use of the microbial pest-control agent *Metarhizium anisopliae* strain ESF1 as follows:

(a) *Metarhizium anisopliae* strain ESF1 may be present as a residue in or on processed animal feeds as a result of application of *Metarhizium anisopliae* strain ESF1 in feed-handling establishments, including areas where livestock and poultry feed is consumed, feed-manufacturing establishments and feed-processing establishments such as stores, supermarkets, dairies, poultry houses, livestock barns, meat-slaughtering and packing plants, and canneries, where feed and feed products are held, processed, sold and/or consumed by livestock or poultry.

(b) Application shall be limited solely to placement of attractant stations containing *Metarhizium anisopliae* strain ESF1 in animal feed- handling establishments.

(c) To ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 93–11870 Filed 5–18–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7067]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No

regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b) (2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
White	City of Searcy	Apr. 21, 1993, Apr. 28, 1993, *The Daily Citizen.*	The Honorable David Evans, Mayor, City of Searcy, 300 West Arch Avenue, Searcy, Arkansas 72143.	Apr. 7, 1993	050229
Van Buren	Unincorporated Areas.	Apr. 23, 1993, Apr. 30, 1993, *The Sun Times.*	The Honorable Dale Lynch, County Judge, P.O. Box 160, Clinton, Arkansas 72031.	Apr. 6, 1993	050566
California:					
Contra Costa	Unincorporated Areas.	Apr. 21, 1993, Apr. 28, 1993, *Contra Costa Times.*	The Honorable Tom Torlakson, Chairman, Contra Costa County Board of Supervisors, 300 East Leland Road, Pittsburg, California 94565.	Apr. 15, 1993	060025
San Diego	City of San Diego	Apr. 22, 1993, Apr. 29, 1993, *San Diego Daily Transcript.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Apr. 13, 1993	060295
Ventura	Unincorporated Areas.	Apr. 23, 1993, Apr. 29, 1993, *Star Free Press.*	Ms. Susan Lacey, Chairperson, Ventura County, Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Apr. 13, 1993	060413
Colorado: Arapahoe	City of Greenwood Village.	Apr. 22, 1993, Apr. 29, 1993, *The Villagers Newspaper.*	The Honorable Rollin Barnard, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111–4591.	Apr. 16, 1993	080195
Florida: Seminole	Unincorporated Areas.	Apr. 28, 1993, May 5, 1993, *Sanford Herald.*	Mr. Ron H. Rabun, Seminole County Manager, 274 Bush Boulevard, Sanford, Florida 32773.	Apr. 15, 1993	120289 B
Georgia: Henry	City of Stockbridge	Apr. 15, 1993, Apr. 22, 1993, *Henry Neighbor.*	The Honorable Rudy G. Kelley, Mayor of the City of Stockbridge, 130 Berry Street, Stockbridge, Georgia 30281.	Apr. 7, 1993	130108 A
Texas:					
Collin	City of Plano	Apr. 21, 1993, Apr. 28, 1993, *Dallas Morning News.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	Apr. 2, 1993	480140
Collin	City of Plano	Apr. 23, 1993, Apr. 30, 1993, *Dallas Morning News.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	Mar. 22, 1993	480140
Tarrant	City of Fort Worth	Apr. 2, 1993, Apr. 8, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Mar. 24, 1993	480596

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 13, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–11843 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–03–7

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Bensalem, Township (Bucks County) (FEMA docket No. 7057)	
Neshaminy Creek:	
Approximately 600 feet downstream of Hulmeville Road	*30
Approximately 0.5 mile upstream of Hulmeville Road	*35
Maps available for inspection at the Code Enforcement Office, 2400 Byberry Road, Bensalem, Pennsylvania.	
Hulmeville, Borough (Bucks County) (FEMA docket No. 7057)	
Neshaminy Creek:	
Approximately 1,100 feet downstream of Hulmeville Road	*29
At Hulmeville corporate limits	*34
Maps available for inspection at the Hulmeville Borough Hall, 517 Lincoln Avenue, Hulmeville, Pennsylvania.	
Ridley, Township (Delaware County) (FEMA docket No. 7058)	
Muckinipattis Creek:	
Approximately 650 feet downstream of upstream corporate limits	*86
Approximately 300 feet downstream of upstream Ridley corporate limits	*87
Maps available for inspection at the Ridley Township Hall, MacDade Boulevard and Morton Avenue, Folsom, Pennsylvania.	
Rose Valley, Borough (Delaware County) (FEMA docket No. 7058)	
Ridley Creek:	
At downstream corporate limits	*67
At upstream corporate limits	*100
Maps available for inspection at the Borough Office, Old Mill Lane, Rose Valley, Pennsylvania.	
Springfield, Township (Delaware County) (FEMA docket No. 7058)	
Crum Creek (Lower Reach):	
At downstream side of Wallingford Road	*73
At Paper Mill Road	*88
Maps available for inspection at the Township Office, 50 Powell Road, Springfield, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Swarthmore, Borough (Delaware County) (FEMA docket No. 7058)	
Crum Creek:	
Approximately 0.36 mile upstream of CONRAIL	*71
At upstream corporate limits	*73
Maps available for inspection at the Borough Office, 121 Park Avenue, Swarthmore, Pennsylvania.	
Thornbury, Township (Delaware County) (FEMA docket No. 7058)	
Chester Creek:	
At downstream corporate limits	*151
At confluence with East Branch Chester Creek	*204
East Branch Chester Creek:	
At confluence with Chester Creek	*204
Approximately 750' upstream of confluence with Chester Creek	*204
East Branch Chester Creek Tributary:	
At confluence with Chester Creek	*155
Approximately 400 feet upstream of confluence with Chester Creek	*156
Maps available for inspection at the Thornbury Township Hall, 754 Cheyney Road, Cheyney, Pennsylvania.	
Trainer, Borough (Delaware County) (FEMA docket No. 7058)	
Marcus Hook Creek:	
Upstream side of U.S. Route 13	*11
Approximately 220 feet downstream of CONRAIL	*14
Maps available for inspection at the Borough Office, 9th and Main Streets, Trainer, Pennsylvania.	
Upland, Borough (Delaware County) (FEMA docket No. 7058)	
Chester Creek:	
CSX Transportation, approximately 50 feet upstream of Interstate Route 95	*26
Approximately 1,300 feet upstream of Upland Road	*28
Maps available for inspection at the Borough Office, Main Street and Castle Avenue, Upland, Pennsylvania.	
Upper Darby, Township (Delaware County) (FEMA docket No. 7058)	
Cobbs Creek:	
At downstream corporate limit (approximately 200' upstream of Baltimore Pike)	*53
At upstream corporate limits (U.S. Route 1)	*129
Naylors Run:	
At confluence with Cobbs Creek	*56
Approximately 110' downstream of Church Lane	*56
Maps available for inspection at the Upper Darby Township Hall, 100 Garrett Road, Upper Darby, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
VIRGINIA	
Roanoke, City (Independent City) (FEMA docket No. 7058)	
Roanoke River:	
At confluence of Tinker Creek	*907
At upstream corporate limits	*982
Tinker Creek:	
At confluence with Roanoke River	*907
Approximately 950 feet downstream of State Route 601	*986
Glade Creek:	
Approximately 1,700 feet downstream of Gus W. Nicks Boulevard	*916
Approximately 300 feet upstream corporate limits	*942
Glade Creek Tributary A:	
At confluence with Glade Creek	*929
Approximately 450 feet upstream of Springtree Drive	*995
Lick Run:	
At confluence with Tinker Creek	*920
Approximately 500 feet upstream of Sioux Ridge Road	*1,106
Trout Run:	
Approximately 0.5 mile upstream of confluence with Lick Run	*925
Approximately 130 feet downstream of 7th Street	*940
Trout Run (Bypass Channel):	
At confluence with Trout Run	*925
At 5th Street	*933
Carvin Creek:	
At confluence with Tinker Creek	*984
At upstream corporate limits	*986
West Fork Carvin Creek:	
Approximately 750 feet downstream of State Route 118	*1,035
Approximately 50 feet downstream of State Route 118	*1,042
Garnard Branch:	
At confluence with Roanoke River	*916
Approximately 25 feet downstream of confluence of Crum Spring Branch	*977
Garnard Branch Tributary:	
Approximately 250 feet upstream of confluence with Garnard Branch	*939
At upstream corporate limits	*987
Crum Spring Branch:	
Upstream side of Garden City Boulevard	*979
Approximately 650 feet downstream of Tipton Avenue	*1,048
Ore Branch:	
At confluence with Roanoke River	*938
At confluence of Ore Branch Tributary	*1,062
Ore Branch Tributary:	
At confluence with Ore Branch	*1,062
Approximately 1,000 feet upstream of Griffin Road	*1,123
Murray Run:	
Approximately 1,300 feet upstream of confluence with Roanoke River	*941
Approximately 50 feet downstream of Ogden Road	*1,061
Peters Creek:	
At confluence with Roanoke River	*968
Approximately 50 feet upstream of State Route 780 (Cove Road)	*1,062
Peters Creek Tributary C:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Peters Creek	*1,027
Approximately 70 feet upstream of Green Ridge Road	*1,062
Murdock Creek:	
At confluence with Mudlick Creek	*981
Approximately 0.42 mile upstream of Deyerle Road	*1,076
Mudlick Creek:	
Approximately 1,000 feet upstream of confluence with Roanoke River	*980
Approximately 1,700 fee downstream of Halevan Road	*1,025
Barnhardt Creek:	
At confluence with Roanoke River	*982
Approximately 120 feet downstream of State Route 419	*1,046
Maps available for inspection at the Office of the City Engineer, 215 Church Street, Roanoke, Virginia.	
Roanoke County (unincorporated areas) (FEMA docket No. 7058)	
Roanoke River:	
At downstream County boundary	*810
Approximately 700 feet upstream of U.S. Routes 11 & 460	*1,184
Back Creek:	
At confluence with Roanoke River	*810
Approximately 2,000 feet upstream of Moonlight Lane	*1,567
Tinker Creek:	
At confluence of Carvin Creek	*984
At upstream County boundary	*1,103
Glade Creek:	
At the City of Roanoke corporate limits	*938
At upstream County boundary	*999
Glade Creek Tributary:	
At confluence with Glade Creek	*963
Approximately 500 feet upstream of State Route 609	*1,047
Cook Creek:	
At confluence with Glade Creek	*990
At upstream County boundary	*1,025
Carvin Creek:	
At confluence with Tinker Creek	*984
Approximately 300 feet upstream of Interstate Route 81	*1,058
Deer Branch:	
Approximately 50 feet upstream of confluence with West Fork Carvin Creek	*1,009
Approximately 0.44 mile upstream of State Route 117	*1,077
Ore Branch Tributary:	
At downstream City of Roanoke corporate limits	*1,061
At upstream City of Roanoke corporate limits	*1,099
Murray Run:	
Approximately 50 feet downstream of Ogden Road	*1,061
Approximately 1,150 feet upstream of Crawford Road	*1,114
Peters Creek:	
Approximately 50 feet upstream of State Route 780	*1,062
Approximately 50 feet downstream of the confluence of Peters Creek Tributaries A and B	*1,102
Mudlick Creek Tributary:	
At confluence with Mudlick Creek	*1,071
Approximately 540 feet upstream of State Route 1652	*1,028

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Mudlick Creek:	
At confluence with Mudlick Creek ..	*1,050
Approximately 50 feet upstream of McVitty Road	*1,099
Barnhardt Creek:	
Approximately 120 feet upstream of State Route 419	*1,056
Approximately 0.89 mile upstream of State Route 686	*1,441
Mason Creek:	
Approximately 200 feet downstream of Interstate Route 81	*1,089
Approximately 100 feet downstream of State Route 699	*1,274
Jumping Run:	
At confluence with Mason Creek	*1,192
Approximately 0.65 mile upstream of State Route 740	*1,266
Dry Branch:	
Approximately 150 feet downstream of Interstate Route 81	*1,144
Approximately 480 feet upstream of Frosty Lane	*1,275
Stypes Branch:	
At State Route 777	*1,115
Approximately 1.1 miles upstream of State Route 793	*1,385
Back Creek:	
At the confluence with Back Creek	*960
Approximately 100 feet upstream of U.S. Route 220	*1,162
West Fork Carvin Creek:	
Approximately 1,050 feet upstream of confluence with Carvin Creek .	*1,003
Approximately 1.2 mile upstream of State Route 1832	*1,154
Wolf Creek:	
At confluence with Roanoke River .	*896
Approximately 1,750 feet upstream of State Route 651	*1,203
Peters Creek Tributary C:	
Approximately 75 feet upstream of Green Ridge Road	*1,062
Approximately 125 feet upstream of State Route 1536	*1,174
Peters Creek Tributary A:	
At confluence with Peters Creek	*1,103
Approximately 90 feet upstream of State Route 1404	*1,221
Peters Creek Tributary B:	
At confluence with Peters Creek	*1,103
Approximately 0.4 mile upstream of confluence with Peters Creek	*1,125
Back Creek Tributary A:	
At the confluence with Back Creek	*1,128
Approximately 60 feet upstream of State Route 904	*1,169
Martins Creek:	
At the confluence with Back Creek	*1,461
Approximately 1.1 miles upstream of State Route 1790	*1,590
Butt Hollow:	
Approximately 340 feet upstream of the confluence with Roanoke River	*1,055
Approximately 600 feet upstream of State Route 640	*1,120
Garnard Branch Tributary:	
Approximately 1,280 feet upstream of confluence with Garnard Branch	*987
Approximately 0.53 mile upstream of confluence with Garnard Branch	*1,020
Mudlick Creek:	
Approximately 90 feet downstream of State Route 682	*1,004
Approximately 0.66 mile upstream of State Route 1796	*1,253
Little Back Creek:	
At confluence with Back Creek	*1,316
Approximately 120 feet upstream of State Route 670	*1,667

Maps available for inspection at the Department of Engineering and Inspections, 3738 Brambleton Avenue SW., Roanoke, Virginia

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Salem, City (independent city) (FEMA docket No. 7058)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Roanoke River:	
Approximately 400 feet downstream of Barnhardt Creek	*981
Approximately 100 feet downstream of Diuguids Lane	*1,050
Mason Creek:	
Approximately 0.47 mile upstream of confluence with Roanoke River	*987
Approximately 200 feet downstream of Interstate Route 81	*1,089
Gish Branch:	
At confluence with Mason Creek	*1,029
Approximately 900 feet upstream of State Route 311 (Thompson Memorial Drive)	*1,188
Bowman Hollow:	
At confluence with Roanoke River .	*1,003
Approximately 80 feet upstream of Bent Ridge Road	*1,131
Williams Branch:	
Approximately 600 feet upstream of confluence with Roanoke River	*1,007
Approximately 1,850 feet upstream of most upstream crossing of Walnut Road	*1,181
Snyder Branch:	
At confluence with Williams Branch	*1,036
Approximately 250 feet upstream of High Street	*1,162
Twelve O'Clock Branch:	
At confluence with Roanoke River .	*1,020
Approximately 345 feet upstream of Smythe Road	*1,207
High School Branch:	
At confluence with Roanoke River .	*1,028
Approximately 70 feet upstream of Goodwin Avenue	*1,133
Barnhardt Creek:	
At confluence with Roanoke River .	*982
Approximately 900 feet upstream of Norfolk and Western Railway .	*992
Butt Hollow:	
Approximately 400 feet upstream of U.S. Routes 11 & 460	*1,079
Approximately 200 feet downstream of upstream corporate limits	*1,133
Paint Bank Branch:	
At confluence with Cole Hollow Brook	*1,036
Approximately 250 feet downstream of upstream corporate limits	*1,131
Cole Hollow Brook:	
At confluence with Roanoke River .	*1,032
Approximately 600 feet upstream of Litchell Road	*1,093
Dry Branch:	
At confluence with Roanoke River .	*1,013
At upstream corporate limits	*1,144

Maps available for inspection at the Office of the Building Official, 114 North Broad Street, Salem, Virginia.

Vinton, Town (Roanoke County) (FEMA docket No. 7058)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Roanoke River:	
At confluence of Wolf Creek	*896
At confluence of Tinker Creek	*907
Glade Creek:	
At confluence with Tinker Creek	*916
Approximately 80 feet upstream of confluence of Glade Creek Tributary	*929
Wolf Creek:	
At confluence with Roanoke River .	*896
Approximately 1,160 feet upstream of State Route 24, west bound lane	*1,060
Tinker Creek:	
At confluence with Roanoke River .	*907
Approximately 1,500 feet downstream of U.S. Routes 460 and 221	*921

Maps available for inspection at the Office of the Building Official, 311 South Pollard, Venton, Virginia

WEST VIRGINIA

Putnam County (Unincorporated areas) (FEMA docket No. 7042)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Poplar Fork:	
Immediately upstream of Interstate Route 64	*652
Approximately 800 feet upstream of county routes 60 and 6	*735
Crooked Creek:	
At confluence with Poplar Fork	*670
Approximately 1,200 feet upstream of County Route 33	*718
Western Tributary to Poplar Fork:	
At confluence with Poplar Fork	*678
Approximately 800 feet upstream of Maple Lane	*690
Crooked Creek Overflow:	
At the confluence with Crooked Creek	*675
Approximately 1,100 feet upstream of confluence with Crooked Creek	*691

Maps available for inspection at the Putnam County Planning Commission, Putnam County Courthouse, Courthouse Drive, Winfield, West Virginia.

WISCONSIN

Outagamie County (unincorporated areas) (FEMA docket No. 7057)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mud Creek:	
Just upstream of County Route BB	*745
At confluence of Mud Creek Tributary 2	*759
Mud Creek Tributary 2:	
At confluence with Mud Creek	*759
Approximately 0.4 mile upstream of Marquette Street	*791
Mud Creek Tributary (backwater from Fox River):	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of County Route BB	*743
Approximately 1,200 feet upstream of County Route BB	*743
Maps available for inspection at the County Zoning Administration, 410 South Walnut Street, Appleton, Wisconsin.	
Pierce County (unincorporated areas) (FEMA docket No. 7056)	
Isabelle Creek:	
Just upstream of Main Street	*1,034
Just downstream of Railroad Street	*1,059
St. Croix River:	
About 7,500 feet upstream of mouth	*691
At county boundary	*692
South Fork Kinnickinnic River:	
About 2,000 feet downstream of State Highway 65	*889
Just downstream of State Highway 65	*996
Just upstream of State Highway 65	*1,002
About 3,000 feet upstream of State Highway 65	*1,018
Mississippi River:	
About 1.2 miles downtream of confluence of Rush River	*682
About 2.6 miles upstream of confluence of Rush River	*682
Maps available for inspection at the Pierce County Courthouse, Ellsworth, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 13, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-11844 Filed 5-18-93; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92-154; FCC 93-218]

Inclusion of Novice Class Operator License Examinations in the Volunteer-Examiner Coordinator Examination System

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: Novice Class operator license examinations were previously under the *ad hoc* Novice system. This action places them under the volunteer-examiner coordinator (VEC) system. It also provides that General Class licensees may administer examinations to Technician Class as well as to Novice Class examinees. The rule change is necessary in order to standardize and simplify the license qualification process. Inclusion of Novice examinations in the VEC system eliminates the confusion that now exists because two different systems are used.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted May 3, 1993, and released May 14, 1993. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this Report and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street NW., suite 140, Washington, DC 20037.

The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Summary of Report and Order

1. The Amateur Service Rules have been amended to place the responsibility for the preparation and administration of entry-level Novice Class operator license examinations under the volunteer-examiner coordinator (VEC) system. The Novice Class examinations were previously under the *ad hoc* Novice system. The Commission said the action was taken in order to standardize and simplify the license qualification process. The Commission also said that administering all amateur operator license examinations under the superior VEC system will avoid the confusion that currently exists because of the two different systems. Further, the amateur service license application (Form 610) can be streamlined by the elimination of the separate certifications by volunteer examiners (VEs) administering Novice examinations under the Novice system.

2. The amended rules also permit VECs and VEs to recover their out-of-pocket costs for coordinating and administering Novice examinations. The VECs and VEs, however, when using the examination-by-examination method, can elect not to recover such out-of-pocket costs.

3. Further, the amended rules specify that General Class licensees may administer examinations to Technician Class as well as to Novice Class licensees.

4. The amended rules are set forth at the end of this document.

5. The amended rules are issued under the authority of 47 U.S.C. 154(f)(4) (A), (B), and (J), 154(i), and 303(r).

List of Subjects in 47 CFR Part 97

Examinations, Radio, Volunteers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301, 609, unless otherwise noted.

2. Section 97.507(c) is revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) to read as follows:

§ 97.507 Preparing an examination.

* * * * *

(c) Each telegraphy message and each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

* * * * *

3. Section 97.511 is revised in its entirety to read as follows:

§ 97.511 Amateur operator license examination.

(a) Each session where an examination for an amateur operator license is administered must be coordinated by a VEC. Each administering VE must be accredited by the coordinating VEC.

(b) Each examination must be administered by 3 VEs, each of whom must hold an FCC-issued amateur

operator license of the class specified below:

(1) For a Novice or Technician Class operator license examination, the administering VEs must hold Amateur Extra, Advanced, or General Class operator licenses; and

(2) For a General, Advanced, or Amateur Extra Class operator license examination, the administering VEs must hold Amateur Extra Class operator licenses.

(c) The administering VEs must make a public announcement before administering an examination for an amateur operator license. The number of candidates at any examination may be limited.

(d) The administering VEs must issue a CSCE to an examinee who scores a passing grade on an examination element.

(e) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application to the coordinating VEC. If telegraphy element credit is claimed under § 97.505(a)(5), the physician's certification and the patient's release on the license application, Form 610, must be completed.

§ 97.513 [Removed and Reserved]

4. Section 97.513 is removed and reserved.

5. Section 97.521(c) is revised to read as follows:

§ 97.521 VEC qualifications.

* * * * *

(c) Agree to coordinate examinations for any class of amateur operator license;

* * * * *

6. Section 97.527 is amended by revising paragraph (a), by removing paragraph (c), and by redesignating paragraphs (d) through (g) as paragraphs (c) through (f) to read as follows:

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating an examination for an amateur operator license.

* * * * *

[FR Doc. 93-11832 Filed 5-18-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 921227-2327]

Taking and Importing of Marine Mammals

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

ACTION: Interim final rule.

SUMMARY: NMFS is issuing regulations to: implement a program to reduce dolphin mortality by U.S. purse seine vessels intentionally setting on dolphins incidental to tuna fishing; require purse seine vessels of greater than 400 short tons (362.8 metric tons) carrying capacity to operate under valid operator and vessel certificates of inclusion if any part of their fishing trip includes the eastern tropical Pacific Ocean (ETP); and implement certain portions of the recently enacted International Dolphin Conservation Act of 1992 (IDCA). These regulations implement a multilateral agreement (Agreement) entered into by the United States and certain other fishing nations at the annual meeting of the Inter-American Tropical Tuna Commission (IATTC), June 16–18, 1992 (IATTC Annual Meeting) consistent with the IDCA.

EFFECTIVE DATE: This interim final rule is effective May 19, 1993.

Comments on the interim final rule must be received or postmarked on or before July 19, 1993.

ADDRESSES: Comments should be sent to, and supporting documents referenced in this preamble are available from: Dr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213, TEL 310/980–4000.

FOR FURTHER INFORMATION CONTACT: Steve Thompson, Assistant to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213, TEL 310/980–4000.

SUPPLEMENTARY INFORMATION:

Background

Schools of yellowfin tuna frequently swim beneath schools of dolphin in the ETP. Fishermen have used this unique relationship by searching for and herding dolphins to capture the yellowfin tuna swimming below, most often by use of a purse seine net. Fishermen encircle the dolphins with the net with the intent of capturing the tuna and releasing the dolphins. Unfortunately, dolphins frequently become entangled in the net, and are injured or killed.

The U.S. Government has established regulations that require domestic fishermen to have 100-percent observer coverage, to equip their vessels with special dolphin safety gear and to follow certain procedures for releasing dolphins. Under those regulations, the incidental dolphin mortality in the U.S. tuna purse seine fleet has decreased from an estimated 400,000 per year in the early 1970s to an observed 439 mortalities in the 1992 fishing year. While there was a substantial decline in the number of U.S. purse seine vessels operating in the ETP during that period, the required dolphin protection equipment and procedures established have led to a decrease in the average dolphin kill-per-set to a level near one dolphin-per-set.

While the U.S. dolphin mortality was declining, the tuna fishing effort and dolphin mortality of other nations fishing in the ETP increased markedly. By the mid-1980s, foreign tuna fishermen were killing three or four times the number of dolphins killed by U.S. fishermen. This led Congress to focus on a multilateral approach to limiting dolphin mortalities in this fishery. Section 104(h)(2)(B)(vi) of the Marine Mammal Protection Act (MMPA) as amended in 1988 required the implementation of vessel performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. Those performance standards were implemented as an interim final rule on May 17, 1990 (55 FR 20458). The 1988 amendments also directed the Secretary of Commerce, through the Secretary of State, to negotiate and enter into international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting yellowfin tuna with purse seines in the ETP, to include provisions for:

(1) Cooperative research into alternative methods of locating and catching yellowfin tuna that do not involve the taking of marine mammals;

(2) Cooperative research on the status of affected marine mammal populations;

(3) Reliable monitoring of the number, rate, and species of marine mammals incidentally taken by vessels of harvesting nations;

(4) Limitations on incidental take based upon the best scientific information available; and

(5) The use of the best marine mammal safety techniques and

equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate.

The Multilateral Agreement

On April 21–22, 1992, a Resolution was agreed to at a Special Meeting of the IATTC to adopt a multilateral program with the objectives of: (1) Progressively reducing dolphin mortality in the ETP to levels approaching zero through the setting of annual dolphin mortality limits (DMLs); and (2) seeking ecologically sound means of capturing yellowfin tuna in the ETP at a level that will permit maximum sustained catches year after year, and to limit or eliminate the mortality of dolphins in the ETP. An annual incidental DML was established for the international fleet for each of the years 1993 through 1999, as follows:

Year	Limit (DML)	Percentage of best estimate of current populations: spotted, spinner, and common dolphins
1993	19,500	0.30
1994	15,500	0.24
1995	12,000	0.19
1996	9,000	0.14
1997	7,500	0.11
1998	6,500	0.10
1999	<5,000	<0.08

This Resolution was formally adopted at the IATTC Annual Meeting and an identical Agreement was ratified by all members of the IATTC and certain other nations that are not members of the IATTC but conduct fishing operations in the ETP. The Agreement established a multilateral framework for compliance controls, observer coverage, equitable assignment of DMLs, and sanctions for violations of the Agreement provisions. The Agreement also established a Review Panel and a Scientific Review Board. Copies of the Agreement are available from NMFS upon request (See ADDRESSES).

One of the most important aspects of the program established by the Agreement is the Review Panel, established to review and report on the compliance of all vessels participating in the DML program and to make recommendations to participating nations for sanctions as appropriate. The Review Panel will be responsible for compiling a list of vessels qualified for a DML from each of the participating nations and will assign a DML for each vessel based on the number of vessels and the established limit for the international fleet for the year, using the formula established by the Agreement. The Review Panel will review reports of all trips in the ETP during the year and will identify any infractions of the Agreement concerning dolphin mortality. The Review Panel will then notify each nation of infractions by vessels under its jurisdiction and review the actions taken by each nation in response to the reported infractions. In an effort to standardize sanctions used by participating nations, the Review Panel will recommend a standardized set of sanctions appropriate for the infractions.

The Review Panel will also make recommendations concerning minimum standards for fishing gear, update the recommendations in response to technological advances, and maintain a list of vessels that carry the needed equipment to reduce dolphin mortality. The Panel will publish an annual report, which will review the operation of the program and recommend modifications to the participating governments, and summarize all identified infractions and actions taken.

The Scientific Advisory Board will assist the Director of the IATTC in matters regarding research to modify current purse seine technology to make it less likely to cause dolphin mortality and to seek alternative means of capturing large yellowfin tunas.

Interim Final Regulations To Implement the Agreement

Existing regulations, found at 50 CFR 216.24(d)(1) through (d)(3), establish specific criteria for operator performance standards. This interim final rule will implement the Agreement for the U.S. fleet in furtherance of the objectives of sections 104 and 108 of the MMPA. These regulations include vessel performance standards intended to further implement these sections of the MMPA by establishing a performance standard system for U.S. purse seine vessels, in addition to the operator performance standards already established.

The vessel standards adopted by the Agreement are annual performance standards, based on calendar years, for the international fleet. Each party to the Agreement is, therefore, required to submit to the Director of the IATTC on or before October 1, a list of purse seine vessels of carrying capacity greater than 400 short tons (362.8 mt) under its jurisdiction that the party believes will set on tunas associated with dolphins in the ETP, and for which the party desires to have a DML assigned for the following year. For the United States to implement this requirement, this interim final rule will require U.S. vessel owners to submit to the Director, Southwest Region, NMFS (Regional Director), on or before September 1, of each year, the name of each U.S. purse seine vessel greater than 400 short tons (362.8mt) carrying capacity for which the owner desires to obtain a DML for the following year. The Regional Director will compile the list of vessels requiring DMLs and forward it to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), for transmittal to the Director of the IATTC.

The Review Panel will meet to assign, by November 1 of each year, a DML to each qualified vessel of the international fleet. For 1993, each DML is equivalent to 19,500, divided by the total number of qualified vessels from the fleets of the participating nations. The Director of the IATTC will notify NMFS of the DMLs assigned to U.S. vessels for the following year.

Under the terms of the Agreement, each nation may modify the individual vessel DML either upward or downward by 15 percent, as long as the total DML for the nation is not exceeded. For the U.S. fleet, as implemented by this rule, NMFS may make these modifications based upon: (1) The vessel's prior year performance; (2) any planned experimental fishing under an experimental operation waiver of 50 CFR 216.24(d)(2) that might result in dolphin mortalities; or (3) other research programs authorized by the MMPA and NMFS that might result in dolphin mortalities. The prior year's performance might be used to increase a vessel's DML if the vessel's kill-per-set is comparable to the other vessels in the U.S. fleet, but the vessel's kill-per-ton is anomalously low. This would indicate that the harvest of yellowfin tuna by that particular vessel is very efficient in terms of low dolphin mortality, and the incentive of increased DMLs would encourage efficient yellowfin tuna harvesting while maintaining a low incidental dolphin mortality. The total number of DMLs assigned to the U.S. fleet would not change as a result of individual vessel modifications; i.e., increasing one vessel's DML would have the effect of decreasing other vessel's DMLs to keep the total U.S. fleet allocation the same.

Any vessel that does not use its DML by June 1, or that leaves the fishery, will lose its right to use its assigned DML for the remainder of the year. All unused DMLs will be returned to the IATTC to be reassigned to other vessels. For the U.S. fleet, NMFS will determine if a vessel has "left the fishery" for the

remainder of the period covered by the DML. A vessel that sinks will be removed from the fishery, but a decision on a vessel that requires extensive repairs or a vessel that leaves the ETP to operate in other oceans will require an assessment by NMFS of the particular facts involved. NMFS will make every effort to determine whether a vessel intends to return to the fishery before notifying the IATTC that there are unutilized DMLs available as assigned to that vessel, including providing an opportunity for the owner of the vessel to submit relevant information and comments for consideration.

If a U.S. vessel is not assigned a DML for a full year, but desires a DML for the 6-month period July 1 to December 31 of that year, the name of the vessel for consideration must be provided to NMFS by March 15 for forwarding to the Director of the IATTC by April 1. There is no guarantee that there will be DMLs available for vessels previously without DMLs for this period. DMLs will be assigned by the IATTC from the pool of unused DMLs that have been returned to the IATTC. Any unused DMLs in the pool will be divided among the applicants from all nations, but a DML to be assigned to an applicant will not exceed 50 percent of the DML for a vessel with a DML assigned for the entire year.

Under the Agreement, the participating nations have agreed to have 100-percent observer coverage, to consist of at least 50 percent IATTC observers. Under this rule, observers, at least 50 percent from the IATTC and the remainder from NMFS, will accompany all trips by U.S. vessels in the ETP.

The vessel operator will be responsible for determining the balance of the vessel's DML before a vessel departs on a fishing trip and for ensuring that the DML for the vessel is not exceeded. The observer will have a record of the balance of the vessel's DML prior to departure for the trip, and the observer records will be available during the trip, including after each set, so that the vessel operator can determine the balance of the DML remaining at any time. The vessel operator must cease deploying the vessel's purse seine nets to intentionally encircle dolphins when the vessel's DML is reached.

As described above, the Agreement established a Review Panel to monitor compliance by each participating vessel. This rule makes it clear that NMFS will consider the recommendations from the Review Panel regarding sanctions for violations of this program and implement those recommendations as appropriate. A U.S. purse seine vessel operating under this program that is determined to have made intentional purse seine sets on or to encircle dolphins after the vessel's DML is reached will be disqualified for a DML for the following year, regardless of the number of mortalities. The vessel owner will be notified of the Review Panel's recommendation for sanctions and then be provided a reasonable opportunity to provide information on whether an intentional set was made after the vessel's DML was reached—before a final determination is made by NMFS.

Interim Final Regulations To Require All U.S. ETP Tuna Purse Seine Vessels To Have Valid Certificates of Inclusion

NMFS is amending the regulations at 50 CFR 216.24(a)(2) to require all U.S. purse seine vessels of greater than 400 short tons (362.8 mt) carrying capacity and built after 1960 to operate under valid operator and vessel certificates of inclusion if any part of their fishing trip includes the ETP. This will not alter any of the requirements under the certificates of inclusion program, nor will it alter the observer coverage requirements. It will provide NMFS the authority to require observer coverage on all purse seine vessels of greater than 400 short tons (362.8 mt) carrying capacity that may take marine mammals in this fishery, either by intentional encirclement or by incidental encounter, and provides procedures that cover all instances of marine mammal encounters. For clarification, NMFS is including in this regulation a definition of "carrying capacity."

The International Dolphin Conservation Act of 1992

On October 26, 1992, the President signed into law the IDCA. The IDCA, among other things, amended the MMPA to authorize the Secretary of State to enter into international agreements to establish a global moratorium on the harvesting of tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals. Such a global moratorium would be of at least 5 years duration and would take effect March 1, 1994. In addition to the authorization to enter into an agreement for a global moratorium, the Act also established certain conditions applicable to the U.S. fleet even if no agreement is reached. This interim final rule addresses those provisions.

Interim Final Regulations To Implement the International Dolphin Conservation Act

One provision of the IDCA prohibits U.S. purse seine vessels from deploying purse seine nets to encircle any dolphins if eastern spinner or coastal spotted dolphins are observed prior to release of the net skiff. This is somewhat more restrictive than the current regulations, which prohibit U.S. vessels from deploying their nets to encircle pure schools of eastern spinner or coastal spotted dolphins. This interim final rule amends the regulations to reflect this change.

Another provision of the IDCA established maximum dolphin mortality levels of 1,000 in 1992, and 800 for the 14-month period beginning January 1, 1993. This interim final rule, therefore, reduces the previously established maximum annual marine mammal mortality limit of 20,500 animals and removes the individual marine mammal species quotas; except that the maximum allowable annual take of 250 coastal spotted dolphin (*Stenella attenuata*) and 429 northern tropical striped dolphin (*Stenella coeruleoalba*) shall remain in effect. The coastal spotted dolphin annual quota is established by section 103(h)(2)(B)(iii)(III) of the MMPA. The annual quota for the northern tropical striped dolphin was established by the Assistant Administrator to limit mortalities from any given target stock to a maximum of 50 percent of the 1979 estimated maximum replacement yield of that stock (46 FR 42068, August 19, 1981). There were no recorded mortalities of this species during 1989–1992 fishing years. The requirements for the General Permit have also been modified by the IDCA.

The maximum incidental marine mammal mortalities established by the IDCA were effective upon enactment and take precedence over any total DML for U.S. vessels operating under the IATTC Agreement. The U.S. fleet is therefore limited to an incidental dolphin mortality of no more than 800 during the 14-month period beginning January 1, 1993, even though the DMLs assigned by the IATTC for the U.S. fleet are more than that. The total incidental mortalities for the U.S. fleet will be monitored by NMFS, and U.S. fishermen will be notified by publication in the **Federal Register** when the quotas are expected to be reached or exceeded.

In addition, minor revisions are made to § 216.24 (b) and (c) to correct typographical errors and update the

address of NMFS' Southwest Regional Office.

Classification

To the extent that this rule implements the IATTC international agreement, it involves a foreign affairs function of the United States, and is not subject to the notice-and-comment and delayed effectiveness requirements of the Administrative Procedure Act pursuant to section 553(a)(1) of that Act. This rule is intended to implement, for U.S. fishermen, the Inter-American Tropical Tuna Commission international agreement, to which the United States is a party. The IATTC agreement calls upon nations fishing for yellowfin tuna in the eastern tropical Pacific Ocean to reduce the levels of incidental dolphin mortality to less than 5,000 by the year 1999, beginning with 1993.

This interim final rule also implements portions of the International Dolphin Conservation Act of 1992, which further restricts incidental dolphin mortality by the U.S. fleet. These restrictions reflect the policy of the United States to eliminate incidental dolphin mortality in the yellowfin tuna fishery in the eastern tropical Pacific Ocean. NMFS has concluded that there is good cause, pursuant to 5 U.S.C. 553(b)(B), to waive advance notice and comment for this rule because it would be contrary to public interest. Likewise, NMFS finds, under 5 U.S.C. 553(d), that there is good cause to issue this rule without a delayed effectiveness period. The intent of Congress is to curb the damage done to dolphin in the commercial tuna industry as soon as possible. Furthermore, a comment period is provided by this interim final rule.

Comments on the interim regulations will be considered if postmarked or received before July 19, 1993. If NMFS is made aware of significant problems in the administration of the provisions of this rule, another interim final rule may be issued prior to issuance of a final rule.

Since notice and an opportunity for comment are not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

The Assistant Administrator has determined that this is not a "major rule" requiring regulatory impact analysis under Executive Order 12291. This interim final rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in major increases in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collections, found at 50 CFR 216.24(d), have been cleared by OMB. The public reporting burden for this continuing collection of information is estimated to average 0.12 hours 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 the collection-of-information requirements, including suggestions for reducing this burden, to Steve Thompson, Assistant to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Project No. 0648–0083.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 13, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, definitions for "carrying capacity", "Dolphin Mortality Limit (DML)", "land" or "landing", and "trip" are added in alphabetical order, to read as follows:

§ 216.3 Definitions.

* * * * *

Carrying capacity means the Regional Director's determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor's report, or the highest amount reported landed from any one trip.

* * * * *

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

* * * * *

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

* * * * *

Trip means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

* * * * *

3. In § 216.24, existing paragraphs (a)(2), (b)(1)(ii), (c)(4)(i)(B), (c)(4)(ii) and (d)(2)(i)(A) are revised and new paragraph (d)(2)(x) is added to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(a) * * *

(2)(i) It is unlawful for any person using a Class I (400 short tons (362.8 metric tons) carrying capacity or less) or Class II (greater than 400 short tons (362.8 metric tons) carrying capacity, built before 1961) U.S. purse seine fishing vessel on a fishing involving the utilization of purse seines to capture yellowfin tuna, that is not operating under a Category 2 general permit and certificate(s) of inclusion, to carry more than two speedboats if any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear Category 2 operations.

(ii) It is unlawful for any person using a Class III (greater than 400 short tons (362.8 metric tons) carrying capacity, built after 1960) U.S. purse seine fishing vessel that does not have and operate under a valid operator and vessel certificate of inclusion, to catch, possess, or land tuna from a fishing trip that includes the Pacific Ocean area described in the General Permit for gear Category 2 operations.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for a person subject to the jurisdiction of the United States intentionally to deploy a purse seine net

on, or to encircle, dolphins from a vessel operating in the ETP when the DML assigned to that vessel has been reached, or when there is not a DML assigned to that vessel.

* * * * *

(b) * * *

(1) * * *

(ii) *Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals.* Commercial fishing operations utilizing purse seines to capture tuna by intentionally encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in paragraph (d)(2)(iv) of this section may be included in this category;

* * * * *

(c) * * *

(4) * * *

(i) * * *

(B) Owners of managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands should make application to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213.

* * * * *

(ii) *Category 2 applications.* Owners or managing owners of purse seine vessels in this category should make application to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

(d) * * *

(2) * * *

(i) * * *

(A) A certificated vessel may take marine mammals only if the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion, subject to the following conditions:

(*1*) The total dolphin mortalities, including mortalities resulting from research, shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994, regardless of the total number of individual vessel DMLs assigned to the U.S. fleet; and

(*2*) The total number of mortalities of coastal spotted dolphin (*Stenella coeruleoalba*) shall not exceed 250, and the total number of mortalities of northern tropical striped dolphin (*Stenella attenuata*) shall not exceed 429, during any year; and

(*3*) No purse seine net may be deployed on or to encircle any school of dolphins in which any eastern spinner dolphin (*Stenella longirostris*) or coastal spotted dolphin (*Stenella attenuata*) are observed prior to the release of the net skiff.

* * * * *

(x) *Vessel Certificate of Inclusion Holder Performance Requirements*—(A) vessel certificate of inclusion holder desiring a DML for the following year must provide to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, by September 1, the name of the purse seine vessel(s) of carrying capacity greater than 400 short tons (362.8 mt) that the owner thinks will intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during that year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as required by the IATTC, for assignment of a DML for the following year.

(B) Each vessel certificate of inclusion holder that desires a DML for the period July 1 to December 31, for a vessel that has not previously had a DML assigned for the year, must provide to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, by March 15, the name of the purse seine vessel(s) of carrying capacity greater than 400 short tons (362.8 mt) that the owner thinks will intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before April 1, or as required by the IATTC, for assignment of a DML for the 6-month period July 1 to December 31. Under the Agreement adopted at the Annual Meeting of the IATTC June 16–18, 1992, the DML shall be assigned from the unutilized pool of DMLs described under paragraph (d)(2)(x)(D) of this section, divided among the applicants for the 6-month period, and shall not exceed 50 percent of the DML assigned to a vessel in the fishery with a DML for the entire year.

(C)(*1*) NMFS will notify vessel owners of the DML assigned for each vessel for the following year as determined by the IATTC.

(*2*) NMFS may adjust the DMLs, either upward or downward with 15 percent of the original DML, except that the adjusted DMLs for the U.S. fleet will not exceed the original total of the DMLs for the U.S. fleet as assigned by the IATTC. All adjustments shall be made prior to December 1, and NMFS shall notify the IATTC prior to December 15. DMLs as assigned on December 1 will be applicable to the following year.

(*3*) NMFS may make an adjustment of a vessel's DMLs if it will further scientific or technological advancement in the protection of marine mammals in the fishery, or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits shall be considered a basis for adjustments.

(D)(*1*) Any vessel assigned a DML, that does not participate, by June 1, in this fishery by operating under valid certificates of inclusion, or that leaves the fishery, shall lose its right to utilize its DML for the remainder of the year.

(*2*) NMFS will determine, based on the available information, whether a vessel has left the fishery. A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates will no longer be conducting purse seine operations in the ETP for the remainder of the period, shall be determined to have left the fishery. NMFS will make all reasonable efforts to determine the intentions of the vessel owner, and the owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and the opportunity to provide information on whether the vessel has left the fishery before NMFS makes a final determination and notifies the IATTC of this determination. The vessel owner will receive written notification of NMFS' final determination.

(*3*) Any unused DML for a vessel that has been determined to have left the fishery will be returned to the IATTC, to be added to the pool of unutilized DMLs.

(E) Any vessel that exceeds its assigned DML, after any applicable adjustment under paragraph (d)(2)(x)(C)(*2*) of this section, shall have its DML for the subsequent year reduced by the amount of overage.

(F)(*1*) The vessel operator and owner are responsible for ensuring that the DML for that vessel is not exceeded.

(*2*) Observers, either from the IATTC observer program or the NMFS observer program, will make their records available to the vessel operators at any time, including after each set, so that the operator can monitor the balance of the DML remaining for use during the trip.

(*3*) Vessel captains must cease deploying purse seine sets to encircle dolphins intentionally when the vessel's DML, as adjusted under paragraph (d)(2)(x)(C)(*2*) of this section, is reached.

(G)(*1*) Sanctions recommended by the Review Panel for any violation of these rules shall be considered by NMFS in its enforcement of these regulations.

(*2*) Intentionally deploying a purse seine net on or to encircle dolphins after the vessel's DML is reached will disqualify the vessel from consideration for a DML for the following year. If already assigned, the DMLs for the following year will be withdrawn, and the IATTC notified by NMFS that the DML assigned to that vessel will be unutilized. The vessel owner will be provided an opportunity to provide information and comments on this issue before a final determination is made by NMFS.

* * * * *

[FR Doc. 93–11814 Filed 5–18–93; 8:45 am]

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Proposed Rules

Federal Register
Vol. 58, No. 95
Wednesday, May 19, 1993

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135 and 1138

[Docket No. AO–14–A65–R02, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service.
ACTION: Proposed rule.

SUMMARY: (See table below.) This decision recommends a special III–A class and price for producer milk that is used to produce nonfat dry milk (NFDM). The same III–A pricing formula is recommended for all 29 markets involved in the proceeding. Such pricing is currently effective on an interim basis in three of the markets where the changes were urgently needed. The decision is based on industry proposals considered at a public hearing held July 30–August 1, 1991, and reopened on the yield factor issue on August 20, 1992, in response to a U.S. District Court order and reopened again on October 5–8, 1992.

Federal orders classify milk used to produce storable dairy products (hard cheese, butter and NFDM) in Class III and price it at the Minnesota-Wisconsin (M–W) price. The Class III–A product price formula is provided because it reflects the value of milk used to make NFDM more appropriately than does the M–W price. These changes will facilitate the orderly disposition of the reserve milk supplies associated with these markets.

DATES: Comments are due on or before June 8, 1993.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would facilitate the orderly disposition of the reserve milk supplies by handlers regulated under the affected orders.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, this action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice of Reopened Hearing: Issued September 22, 1992; published September 25, 1992 (57 FR 44344).

Revised Tentative Decision: Issued October 20, 1992; published October 27, 1992 (57 FR 48575).

Interim Amendment of Orders: Issued October 29, 1992; published November 3, 1992 (57 FR 49633).

7 CFR Part	Marketing area	AO Nos.
1001	New England	AO–14–A65–R02
1002	New York-New Jersey	AO–71–A80–R02
1004	Middle Atlantic	AO–160–A68–R02
1005	Carolina	AO–388–A5–R02
1007	Georgia	AO–366–A34–R02
1011	Tennessee Valley	AO–251–A36–R02
1030	Chicago Regional	AO–361–A29–R02
1033	Ohio Valley	AO–166–A62–R02
1036	Eastern Ohio-Western Pennsylvania	AO–179–A57–R02
1040	Southern Michigan	AO–225–A43–R02

7 CFR Part	Marketing area	AO Nos.
1044	Michigan Upper Peninsula	AO–299–A27–R02
1046	Louisville-Lexington-Evansville	AO–123–A63–R02
1049	Indiana	AO–319–A40–R02
1065	Nebraska-Western Iowa	AO–86–A48–R02
1068	Upper Midwest	AO–178–A46–R02
1079	Iowa	AO–295–A42–R02
1093	Alabama-West Florida	AO–386–A12–R02
1094	New Orleans-Mississippi	AO–103–A54–R02
1096	Greater Louisiana	AO–257–A41–R02
1097	Memphis, Tennessee	AO–219–A47–R02
1098	Nashville, Tennessee	AO–184–A56–R02
1099	Paducah, Kentucky	AO–183–A46–R02
1106	Southwest Plains	AO–210–A53–R02
1108	Central Arkansas	AO–243–A44–R02
1124	Pacific Northwest	AO–368–A20–R02
1126	Texas	AO–231–A61–R02
1131	Central Arizona	AO–271–A30–R02
1135	Southwestern Idaho-Eastern Oregon	AO–380–A10–R02
1138	New Mexico-West Texas	AO–335–A37–R02

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and certain other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 20th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 30-August 1, 1991, pursuant to a notice of hearing issued July 16, 1991 (56 FR 33395) and reopened on August 20, 1992, pursuant to a notice of reopened hearing issued August 11, 1992 (57 FR 36609) and reopened again on October 5–8, 1992, pursuant to a notice of reopened hearing issued September 22, 1992 (57 FR 44344).

For the convenience of the reader the permanent amendments proposed for all 29 orders involved in this proceeding are being printed in this recommended decision. Interim amendments providing III–A pricing have been in effect under the New England, Middle Atlantic and Pacific Northwest orders since November 3, 1992. For the Pacific Northwest order, the amendments recommended herein would be unchanged from the interim amendments. However, for the New England and Middle Atlantic orders the powder price for the Western region is recommended rather than the Central States powder price, which is being used now to compute Class III–A prices under the two orders.

The material issues on the record of the hearing relate to:

1. Pricing producer milk used to manufacture butter and nonfat dry milk; and

2. The need for emergency action with respect to issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pricing producer milk used to manufacture butter and nonfat dry milk.* A special Class III–A use classification and price should be provided for producer milk used to manufacture nonfat dry milk (NFDM). The pricing change should be adopted uniformly in all orders involved in this proceeding.

The Class III–A pricing formula utilizes the "modified yield" factor and the 12.5-cent processing cost that are currently being used in the three orders where Class III–A pricing was previously adopted. In addition, the Western States nonfat dry milk price series will be used in the Class III–A pricing formula for all orders. In this regard, Official Notice is taken of the document issued by the Assistant Secretary on January 13, 1993 (58 FR 5255) which determined that the new combined Western States nonfat dry milk price series is equivalent to the former Western Grade A nonfat dry milk price.

As set forth in the amendatory language contained with this decision, the Class III–A pricing formula is the NFDM price minus 12.5 cents multiplied by 9 minus .4 divided by the NFDM price for the month, adjusted to 3.5 percent butterfat content. The application of the formula will result in a uniform Class III–A price for producer milk used to make NFDM under all orders involved in the proceeding.

An initial tentative decision on this subject was issued on December 10, 1991 on the basis of evidence presented at a public hearing that was held July 30-August 1, 1991. The decision provided for the implementation on an interim basis of Class III–A pricing in three of the Federal orders involved in the proceeding. Prior to the implementation of the pricing formula in the three orders, a revised tentative decision was issued to modify the yield factor in the pricing formula. A second session of the hearing was held on August 20, 1992, as required by a Court Order, to reconsider the limited issue of the appropriate yield factor to be included in the pricing formula in the three orders. On the basis of that session of the hearing, a second revised tentative decision was issued on October 20, 1992, to provide for the implementation on an interim basis of the modified yield factor that is currently in effect in three orders. A third session of the hearing was held October 5–8, 1992, to provide all interested parties with the additional opportunity to present testimony and evidence with respect to the entire issue of the Class III–A pricing.

The initial decision concluded that the Minnesota-Wisconsin (M–W) price, which is an average of prices paid for manufacturing grade milk regardless of its use, does not always represent the value of milk regardless of its use, does not always represent the value of milk in any one particular use, such as NFDM. The decision concluded that the difference between the M–W price and the value of milk used to make NFDM was of such a magnitude that a special Class III–A use and price was warranted rather than the M–W price which is used as the Class III price. The implementation of such pricing was limited to three orders (Orders 1, 4 and 124) based on three criteria: (1) The magnitude of the problem as indicated by the amount of NFDM produced; (2) whether it was practical for reserve and surplus milk supplies to be channeled into alternative uses; and, (3) whether there was an inequitable sharing among dairy farmers of the burden of disposing of reserve milk supplies as a result of NFDM production.

The second reopening of this proceeding provided the opportunity for interested parties to address any changes in marketing conditions relative to the value of milk used to make NFDM as well as the opportunity to present additional evidence on the magnitude of the pricing problem in those orders for which Class III–A pricing was not adopted. In addition to having about another year of data available, the second reopening provided a unique opportunity for both proponents and opponents to present testimony with respect to the previously made findings and conclusions. In addition to updating statistics concerning marketing conditions, the testimony can basically be divided into three broad categories, as follows:

(1) The appropriateness of the criteria used in the initial decision to limit Class III–A pricing to three markets;

(2) The factors to be used in any Class III–A pricing formula; and,

(3) Continued opposition to the implementation of Class III–A pricing in any market.

Prior to discussing the merits of these three issues, it is first necessary to review the additional data presented at the second reopening of the hearing concerning the values of milk used in nonfat milk relative to other manufacturing uses. In this regard, it is noted that the initial decision, in denying the implementation of Class III–A pricing for Order 2, concluded that it was not anticipated that the pricing change in the adjacent Orders 1 and 4 would be of such magnitude or duration as to interfere with the price allotment situation of competing handlers in the northeast. The additional year of data, however, indicates that a substantial price disparity between the M–W price and the value of milk used to make NFDM has persisted and intensified during 1992.

For example, if the market values for NFDM (established from the Class III–A product price formula adopted herein) are compared with the M–W prices during 1990–92, the magnitude of the problems these handlers have faced is evident. For instance, in 1990 handlers processing milk into NFDM accounted for such milk to Federal order pools at M–W prices which averaged 92 cents per hundredweight higher than the market value of the NFDM made from the milk. Similarly, in 1991 such prices were 64 cents per hundredweight greater that NFDM market values and $1.33 greater in 1992.

Additionally, it is noted that the value of NFDM exceeded the M–W price in only two months of 1990 during the 36-month period of 1990–92. In 1990, the M–W prices ranged from $3.47 over the NFDM value in January to 40 cents under such value in May. In 1991, the M–W prices ranged from a low of 24 cents over the NFDM value in March to $1.67 over such value in September. In 1992, the M–W price exceeded the NFDM value by as little as 63 cents in March to as much as $2.01 in September. These numbers show that the price/value differences have persisted since the hearing and that the financial situation for butter/NFDM processors actually worsened in 1992.

A similar situation is depicted if the margins of butter/powder processors are evaluated for that 3-year period. For instance, the operating margins of such manufacturers averaged 64 cents per hundredweight in 1990, 79 cents in 1991 and only 54 cents in 1992. Such make allowances averaged only about half of the $1.22 allowance recognized in connection with the Federal price support program. However, there is extensive evidence in this record showing that the cost of operating many of the surplus disposal plants, which are utilized at less than full capacity from time to time because of fluctuations in the amount of milk they receive for processing and which results in higher than normal operating costs, far exceeds the support program's $1.22 make allowance. These comparisons also indicate that butter/powder processors have faced precarious financial situations the past few years.

A substantial number of witnesses representing proponents of Class III–A pricing provided additional data on NFDM production and the extent to which surplus milk can be, or has been shifted to cheese production. The data indicates that the problem of economically manufacturing NFDM at the Class III price level is more widespread than as portrayed at the initial session of the hearing. This point is illustrated by a number of examples of the testimony presented at the hearing.

For the Order 2 market, the record shows that the volume of milk manufactured into NFDM doubled from 1989 to 1991, increasing from 89 million pounds to nearly 200 million pounds. Preliminary data for the first seven months of 1992 show that the trend is continuing. Furthermore, while the amount of milk used in NFDM has fluctuated considerably, the pounds of producer milk utilized in all cheeses has remained remarkably stable—3.5 billion pounds in 1987, 3.4 billion in 1988 and 1989, 3.6 billion in 1990, and 3.3 billion pounds in 1991. Such data suggests that cheese plants are operating at or near capacity and that NFDM production is clearly the use of last resort.

With respect to Order 49, Milk Marketing Inc. (MMI) testified that the findings in the initial decision relative to the amount of NFDM production were incorrect. MMI contended that a much greater amount of NFDM was being produced under the order. In this regard, official notice is taken of the Order 49 monthly *Reporter* for the month of October 1992. The publication contains a revision of statistical material contained in exhibit 97 introduced at the hearing. The revised data indicates that during the June 1991–August 1992 period over 220 million pounds of milk was used to produce butter and NFDM under the order and that the imputed skim milk pounds used to produce NFDM was about 147.6 million pounds.

MMI further testified that its Goshen, Indiana, plant performs a major balancing function for a number of orders. Over the past two years the plant received milk from 14 different Federal order markets. MMI testified that this was done because no other market or outlet was available because cheese plants were either operating at full capacity or were unwilling to accept any more milk. Data on the receipts of milk at Goshen and the amount of NFDM production were also presented by MMI as well as claimed losses for its membership of over two million dollars over the July 1991 through August 1992 period. MMI claimed that such losses and the amount of NFDM produced are considered to be substantial in terms of the organization.

MMI further testified that shifts to cheese production have been made to

the extent possible since the initial hearing was held in 1991. However, the number of cheese outlets available are not sufficient to handle all of the milk supplies available in the Orders 33, 36, and 49 milksheds. As a result, substantial supplies must be processed into NFDM.

Michigan Milk Producers Association (MMPA) testified that reserve milk supplies under Order 40 have been shifted to cheese production to the extent possible. However, during 1992, in excess of 20 million pounds of producer milk were processed into NFDM in June and July while about 12 million pounds were used for NFDM in August. MMPA testified that this was the best option available despite the fact that the returns received were less than the Class III price.

With respect to Order 30, Class III–A pricing was supported by 11 of the 14 cooperative members of Central Milk Producers Cooperative (CMPC) that represent over 70 percent of the milk pooled under the order. Consequently, the proposal has widespread support among producers supplying the market compared to limited support indicated at the initial hearing. According to CMPC, about 264 million pounds of Order 30 skim milk were received by six processing plants for processing into NFDM during the January-July 1992 period.

Associated Milk Producers, Inc. (AMPI) which withdrew its support for Class III–A pricing at the initial hearing, testified in support of such pricing at the reopened hearing for Orders 65, 68 and 79. AMPI testified that it represents about 7200 producers under the three orders and that it operates two NFDM plants in the Order 65 market and one each under Orders 68 and 79. For the three orders combined, AMPI testified that 566.7 million pounds of skim milk were used to produce NFDM during 1991 and that 244.4 million pounds were used for NFDM during the first seven months of 1992. AMPI testified that such movements were necessary because of a lack of alternative cheese processing capacity.

AMPI also testified that Class III–A pricing should be adopted in Orders 106, 108, 126 and 138 because of the need to process substantial quantities of surplus milk into NFDM because it cannot be disposed of to the fluid market or used for cheese production. AMPI presented data on the amount of milk used to produce butter/powder and cheese throughout AMPI's southern region as well as the total pounds of NFDM produced. AMPI also provided data on the amount of milk received at its southern region manufacturing plants and the amount of milk diverted to nonpool plants for manufacturing. Such information was not previously provided for the record.

For the four markets combined, just over 972 million pounds of milk was used in butter/powder during the first eight months of 1992 (12.2 percent of producer receipts) while just over 2,711 million pounds of milk was used for cheese production (21.8 percent of producer receipts). Also, during the first eight months of 1992, over 50 million pounds of NFDM was produced by AMPI's southern region, compared to 32 million pounds during all of 1991 and 35.7 million pounds during 1990. The increase in NFDM production and milk disposed of to butter/powder plants is attributed to a lack of sufficient cheese plant capacity, even though cheese plant capacity has been expanded by AMPI. AMPI testified that available cheese plant capacity is utilized to the maximum extent and that the volumes of milk utilized in cheese production for the first eight-month period in each of the last three years has increased.

United Dairymen of Arizona (UDA) testified that significant amounts of milk must be processed into NFDM under Order 131 despite an increase in cheese plant capacity. UDA testified that the expansion of the cheese plant did not result in UDS's ability to direct more supplies of milk to cheese production. The decision on the amount of milk to be taken by the cheese plant is not under the control of UDA. When additional milk is available, it must be processed into other manufactured products if it is not accepted by the cheese plant. UDA testified that during the 12-month period from July 1991 through June 1992, UDA produced NFDM in its manufacturing plant in amounts that ranged monthly from a low of 108 thousand pounds to a high of 1.9 million pounds. UDA produced in excess of 450 thousand pounds of NFDM in seven of the 12 months and was forced to divert 91 million pounds of milk to butter/powder plants during the 12-month period. This occurred because, from a practical standpoint, there were no cheese plants available.

Dairymen, Inc. (DI), testified that Class III–A pricing should be adopted in nine southeastern Federal order markets (Orders 5, 7, 11, 46, 93, 94, 96, 98 and 99) since the problem of pricing milk in excess of its value in NFDM exists in all Federal order markets. DI testified that there are very few cheese plants available in the southeast to handle reserve milk supplies and that cheese plant manufacturing capacity has been declining. As a result, reserve supplies of milk must be processed into butter and NFDM, primarily at the three manufacturing plants operated by DI. For the November 1990 through June 1992 period, DI testified that more than 439 million pounds of skim milk was received at its three manufacturing plants that produced in excess of 39 million pounds of NFDM. Variable amounts of milk were received at the three plants from each of the nine southeast Federal order markets, indicating that the plants serve a major balancing role for reserve supplies of milk that exist throughout the Southeast. DI contends that it incurs substantial losses because the Class III price exceeds the value that can be returned from the milk that is used to produce these quantities of NFDM.

Proponents representing Orders 1, 4 and 124 also presented additional testimony on the need to continue Class III–A pricing in these orders. The witnesses provided an update of the statistics on the substantial amounts of NFDM that continue to be processed under the three orders.

The previous brief description of testimony presented at the reopened hearing reveals several important considerations with respect to the findings and conclusions in the initial decision. First of all, NFDM production is, and has been, the use of last resort for reserve supplies of milk for a substantial period of time. Although the amount of NFDM produced is not as great as NFDM production in the three markets where Class III–A pricing was initially adopted and is currently in effect, significant quantities are produced in other Federal order markets. The losses that occur as a result of improper pricing obviously have an impact on individual organizations. Such losses were considered to be significant by the organizations involved.

Testimony at the reopened hearing also indicates that the existence of potential cheese plant capacity, by itself, is not a sufficient basis for denying Class III–A pricing. The record indicates that milk supplies have been redirected to cheese production where possible. However, regardless of the incentive to shift milk to cheese production, it has not been possible to dispose of all available reserve supplies in cheese uses either as a result of insufficient capacity or because cheese plants simply had no need for additional milk supplies.

Additional testimony at the reopened hearing also suggested that the initial decision should have considered the extent to which the application of Class III–A pricing in any one market has a tendency to set a price for excess milk

over a broader area than in just the order in which it is adopted. Witnesses representing the Order 2 market testified to the marketing problems that developed as a result of the adoption of Class III–A pricing in the adjacent Orders 1 and 4. According to the testimony, the lower price in the adjacent orders basically set the same value for surplus milk used in NFDM under Order 2 even though Order 2 handlers were required to account for such milk at the higher class III price. This resulted in placing Order 2 handlers at a disadvantage relative to other order handlers in selling NFDM in a national market. In addition, it had the effect of inhibiting the processing of excess Order 2 milk in neighboring order manufacturing plants that serve as outlets for excess milk supplies originating from common procurement areas.

The degree to which any losses associated with NFDM production are shared among producers is an equity issue that depends on the organizational structure of the producer milk supply. The argument is that if one organization incurs losses in manufacturing NFDM to clear the market of excess milk supplies, that organization bears the entire cost while other producers receive the benefits of the market clearing activity with none of the associated costs. If a Class III–A price is implemented to reflect the value of milk in NFDM, any loss on NFDM production would be reduced, while the lower blend price to producers would result in spreading the cost of the market clearing activity among all producers. The manner in which the costs and/or losses are shared is a function of the producer organizational structure that varies among the markets.

The identified problem, however, is a pricing problem wherein milk is priced in excess of its value in a particular use. Over a period of time, handlers should not be required to pay a minimum price for milk that averages above the value that can be returned from the products made from such milk. In an individual-handler pool market, such an activity would result in the subsidization of producers from returns from other products or the unwillingness to accept and market reserve milk supplies. In a marketwide pool, such activity results in a disproportionate sharing of the costs among producers, the unwillingness to accept milk or attempts to pass the burden of marketing the surplus to others. None of these conditions is conducive to the maintenance of stable and orderly marketing conditions. The only manner to rectify the problem at hand is to deal with the pricing issue.

The price disparity between milk used to produce NFDM and the M–W price was set forth previously in this decision. In this regard, the M–W price was never intended to represent the value of milk in any one particular use. It is simply an average of prices paid for manufacturing grade milk used in the primary manufactured products of butter/powder and cheese. Such price is used as the Class III–A price under orders because the manufactured butter/powder and cheese made from Grade A milk compete with the same products made from manufacturing grade milk in a national market. It is a price that encourages handlers to process excess milk into storable butter/powder and cheese to clear the market of residual milk supplies.

Within the surplus use class, it is obvious that milk has different values in different uses. The values change as product prices change in response to supply and demand conditions of the various products. It is expected that milk will be directed to supply those product uses that provide the greatest returns. In other words, market forces, or the profit motive, provide the incentives for milk supplies to be directed to alternative uses. These shifts in the uses of milk result in product price changes that in turn provide an automotive shift in the values of milk among the various surplus uses.

It is apparent from the data in the record, that for one reason or another, the marketplace has not been able to fully adjust to the greater value of milk in cheese relative to NFDM. Consequently, the M–W price has continued to be substantially in excess of the value of milk used to produce NFDM for virtually all months over the last three years. As a result, the M–W price has not been an appropriate market clearing price for the residual supplies of milk that must be utilized in NFDM production.

As a result of the persistence of the pricing problem, Class III–A pricing should be adopted uniformly in all orders involved in the proceeding. In addition, the same Class III–A price should be established in all orders to maintain the concept that currently applies with Class III pricing under Federal orders. The Class III price is the same under all Federal orders without regard to any regional location value that may be attributed to the products made from such milk. This encourages surplus milk to be processed at the nearest manufacturing facilities available to minimize the transportation cost associated with hauling bulk milk. With the same minimum Class III price, processors are then free to compete for sales in a national market with concentrated products made from such milk that have a substantially lower hauling cost. The application of this concept will place all processors of NFDM under Federal orders at the same starting point in terms of minimum prices for milk.

The previous discussion, as well as most of the testimony at the hearing, involves the situation where the value of milk used to produce NFDM is less than the M–W price. The entire emphasis of the hearing and the need for the pricing change is based on the need to minimize the losses that occurred in processing NFDM. The testimony reveals that the M–W price does not represent the value of milk used in NFDM. Consequently, as proposed, the Class III–A pricing formula implemented herein should apply at all times. Milk used to make NFDM will be priced on the basis of the formula price regardless of whether such price is higher or lower than the Class III price. The need to make the pricing change is based on the persistence and degree of the pricing problem exhibited over the last three years. Virtually all witnesses characterized the M–W price as a "cheese driven" price and characterized the West Coast (particularly the State of California) as being the driving force for the NFDM market. It is exactly this phenomenon, which led to disparate pricing for milk that is used to produce NFDM versus milk that is used to produce cheese, that is addressed by the Class III–A pricing formula.

Opposition testimony and briefs contended that the pricing formula results in a Class III–A price that is too low to represent the value of such milk. A number of arguments were offered to illustrate that either the yield factor or processing cost, or both, in the pricing formula should be modified to result in a different Class III–A price. Since the CCC processing allowance (difference between milk cost and product return) for butter and NFDM is based on making both products from a hundredweight of milk, it is argued that the pricing formula should reflect the specific costs and yields for NFDM that are utilized under the California State milk pricing program. This basically would amount to using a higher yield factor and a lower processing cost than is incorporated in the Class III–A pricing formula.

The opposition arguments miss the point of the pricing problem presented at the hearing. The emphasis for the hearing is the undisputed fact that the

M–W price has been in excess of the value of surplus milk used to make NFDM. If the relative prices of cheese and NFDM resulted in essentially the same milk values, there would be no pricing problem. This "normal" relationship between the values of milk in both uses is exhibited when market prices are resting at supports. In such a situation, both butter/powder and cheese plants are intended to have the ability to return the support price for milk with the revenue generated from selling butter, NFDM, and cheese to the government. In other words, there would be no milk price disparity among the manufacturing plants processing these products. This is accomplished by the pricing formula that is adopted herein.

Opposition testimony and briefs also argued that the record does not establish conclusively that the cooperative associations are incurring losses under the pricing situation that existed during the last three years. They contend that any manufacturing losses are either being made up, or could be made up, by increasing prices for milk in other uses. Basically, the opposition argues that any manufacturing losses are being offset by other portions of the cooperative associations marketing and pricing activities. It is further argued that any losses that are a result of balancing activities should be recovered from the marketplace and that any recognition of any losses by a class pricing change is a substantial deviation from longstanding Department policy on the matter of how costs associated with balancing a market may be recovered from the market.

The processing of surplus milk is a balancing function that is a benefit for a market, and there is some value attributable to this function. Apart from the pricing issue, there is some cost associated with this balancing function, some of which may be recovered from the marketplace to the extent of the perceived value of the balancing service. The cost of balancing a market, or the additional costs that are associated with performing a balancing function, is separate from the surplus pricing issue that is the focus of this proceeding. As a result, it is difficult to comprehend how the application of a higher price for milk in fluid uses would be an appropriate mechanism to resolve the problem created by the imposition of a Class III price that is in excess of the value that can be returned from NFDM. The problem of an excessive Class III price should not be resolved by further increasing the price of milk.

Testimony in opposition to the implementation of any Class III–A pricing was presented at the reopened session of the hearing. Such testimony was presented by a number of parties that included bargaining cooperative associations, fluid milk handlers, proprietary cheese manufacturers, cooperative associations that operate cheese plants, and others. Basically, the testimony was reiteration of testimony presented at the initial hearing. They continue to argue that the marketplace is indicating that other products should be made from milk if the cost of milk cannot be recovered from NFDM, that the cost of balancing the market is or should be covered by over-order charges, and that returns to all dairy farmers should not be reduced because some cooperative associations continue to operate butter/powder plants rather than cheese plants.

All of the preceding arguments were covered in the initial decision and amplified upon in this decision. While the opposition expresses a desire to maintain the status quo, the reasons for implementing Class III–A pricing are compelling.

The Class III–A price formula included herein utilizes the western powder price in each of the orders. This price is currently being used in Order 124 while the central states powder price is being used under Orders 1 and 4.

The Western powder price was proposed to be used for the western Federal order markets while the Central States price was proposed for the remaining orders. At the reopened hearing a number of parties testified that the pricing difference should be continued while others suggested that possibly an additional eastern powder price should be used in eastern Federal order markets. Others suggested that the Western powder price be used in conjunction with a factor to recognize the cost of hauling powder from the western area to the East. In briefs, a number of parties suggested that the Class III–A price be as uniform as possible while recognizing some costs associated with hauling powder, while one party argued that the Western powder price should be used under all orders.

There is obviously some location value associated with NFDM as there is with other finished manufactured products like butter and cheese. However, manufacturers of these finished products compete with each other for sales throughout the nation. Thus, currently, the minimum price for milk used in these products is uniform throughout the country, with some minor exceptions. This insures that all processors of these products have the same starting point in terms of the minimum price for milk. They are then left to compete for sales with each other throughout the country. In some areas the processors will have a location advantage over competitors and in some areas a disadvantage. However, the marketplace, and not differences in the minimum price for milk, determines the relative advantages. In order to allow competitive forces to continue to operate, the Class III–A price should be uniform among the Federal order markets as is currently the case with the Class III price. Using different powder prices in the Class III–A price could result in substantial price differences among nearby manufacturing plants, depending upon where the dividing line is established for using different prices. Establishing different price levels would not be consistent with the price support program and the national market nature of the NFDM market.

The Western powder price has been lower than the Central States powder price during the period covered by the data in the record. However, the difference between the prices are not consistent. At higher price levels, the Central States price exceeds the Western price by greater amounts. As powder price levels drop, the difference narrows. At supports, the prices would be expected to the be the same as the CCC powder purchase price and be uniform throughout the country.

Use of the Central States price would result in a higher Class III–A price than results from use of the Western powder price. Thus, establishing a Class III–A price on the basis of the Central States price would result in pricing milk in excess of its value for a considerable amount of NFDM production. In using the Western powder price, there is more assurance that the Class III–A price that results from its use will not overvalue milk used to make NFDM and will be more consistent with the market clearing function of the price for milk in surplus uses. Also, the West Coast is by far the largest producing area of NFDM in the country, representing about 60 percent of total powder production. As such, it is recognized as the driving force in the powder market.

A number of related issues were raised at the hearing and in briefs. One such issue is the existence of a transportation credit under Order 126. At least one party implied that a transportation credit should not apply if Class III–A pricing is implemented under that order.

The transportation credit that exists under Order 126 was implemented to recognize a unique marketing situation that exists under that order. Milk

produced in the major production areas of the marketing area was in excess of all available plant capacity. It was demonstrated that there were no nearby outlets capable of handling all of the supplies of milk that were available during certain periods of the year. Handlers who accepted such milk incurred substantial hauling costs in moving such excess milk to distant manufacturing plants. By marketing milk that exceeded all plant capacity, handlers were providing a service of value that was a benefit to the entire market.

In recognition of this service, a transportation credit is applied to cover a portion of the additional costs that are incurred by handlers in serving the interests of producers who supply the market. These are costs that are above and beyond the minimum price for milk. Thus, the transportation credit should continue to apply under the order to recognize the marketing service provided by handlers. The Class III–A price should also apply to rectify the pricing problem for milk used to make NFDM.

Several interested parties proposed modifications to III–A pricing at the second reopened hearing session. Dietrich's Milk Products, Inc. renewed its efforts to testify about including whole milk powder in Class III–A. The handler advanced the same position at the initial hearing session. In both instances, the Administrative Law Judge ruled that Dietrich's modification would be outside the scope of the hearing notice and thus refused to permit testimony on the subject. We agree with the Judge's conclusions on this issue.

In its brief, Dietrich stated that it did not want its position on classifying and pricing milk used to make whole milk powder to impede the decision on Class III–A pricing for a skim milk that is dried. The handler supported expedited action on III–A pricing of milk used to make nonfat dry milk if the issue of classifying and pricing milk used to produce whole milk powder, which greatly concerns Dietrich, would be addressed by the Secretary either in a follow-up recommended decision or at a future hearing. Since no testimony was permitted on the issue of pricing whole milk powder at this hearing, it would not be appropriate to decide this issue on the record for this proceeding.

Farmers Union Milk Marketing Cooperative (FUMMC) and the Trade Association of Proprietary Plants (TAPP) proposed an alternative to classifying and pricing all milk used to produce nonfat dry milk in Class III–A. They suggested that only dairy products which ultimately are sold to the Commodity Credit Corporation under the government's price support program be subject to such classification and pricing. They also suggested that III–A pricing apply only for a limited period of time. They contended that this would give processors an opportunity to shift their milk supplies and manufacturing operations away from butter/powder plants and toward the processing of higher-valued products such as cheeses.

Since this proposal was not included in the hearing notice, interested parties did not come to the hearing prepared to discuss either the merits or the implementation of such an alternative pricing arrangement. The proponents did not provide a detailed explanation about how they intended for their proposal to be implemented, which leaves many questions about its adoption unanswered. For instance, since III–A prices apply to the pounds of milk used to produce the manufactured dairy products rather than to the pounds of butter and nonfat dry milk sold, some method would have to be established to isolate which products were in fact sold to the government and to convert the pounds of dairy products to a fluid milk equivalent for pricing purposes. Furthermore, the Class III–A pricing formula contained herein would apply regardless of whether the resulting price is lower or greater than the M–W price. These and other ramifications of the alternative suggested by FUMMC and TAPP were not fully explored at the reopened hearing. In view of the foregoing, the record fails to support the adoption of the modified Class III–A pricing arrangement advanced by proponents and no further action on the proposal is warranted.

Farmland Dairies, Inc., an Order 2 fluid handler, testified that if III–A pricing is adopted the orders should provide a mechanism to ensure that the milk of dairy farmers is being made available to handlers who are processing dairy products which have greater value than III–A products, which would be priced at a market-clearing level. The witness for Farmland testified that classified pricing under a Federal order is intended to ensure that the handler with the highest use classification and price will have first call on the market's available milk supply and then the next highest use will be supplied until all such needs have been furnished. Establishing these priorities assures that the market's dairy farmers will receive the highest possible blend prices. Also, if these objectives are not met, classified pricing is not working properly, the handler contended.

To assure that these objectives are attained if III–A pricing is provided, Farmland suggested that the market administrator operate a so-called "clearing house" for the purpose of disposing of the market's excess milk supplies. The witness for proponent suggested that III–A processors be required to report to the market administrator once each week the number of loads of milk they intend to process into III–A products. This surplus disposal information would be disseminated to the market's handlers by the market administrator. Any handler who could use the milk in a higher-valued product could inform the market administrator of such intentions. The excess supplies would be allocated by the market administrator, on a first-come first-served basis with the highest bid receiving the preferential treatment. Under the Farmland proposal, if a handler is willing to pay the minimum class price plus the transportation for the excess milk, the III–A processor would be required to make the milk available to the handler processing such higher-valued products.

Farmland testified that if handlers want a market-clearing price to apply, there must be a demonstration that the milk processed into III–A products actually exceeds the other needs of the market's handlers. If no handler requests the milk available on the market administrator's weekly offer sheet, then the milk could reasonably be considered surplus and could be processed into III–A products and priced at the market-clearing price, Farmland testified.

Farmland, like FUMMC and TAPP, testified in opposition to III–A pricing at this hearing. These modifications were suggested by the handlers only in the event the Secretary decided that III–A pricing should be provided. Since the Farmland alternative was not printed in the hearing notice, interested parties were not really prepared to discuss the merits of such a modification. Although numerous questions were asked about the implementation of such a proposal, the ramifications of the proposal were not explored to such an extent as to support its adoption in this decision.

Also, there is no evidence in this record to indicate that handlers processing value-added products are having problems obtaining adequate milk supplies or that III–A processors are committing milk supplies to their butter/powder plants before making that milk available to handlers making value-added products. The record seems to indicate just the opposite situation is happening in that III–A processors limited to butter/powder manufacturing

are left with milk supplies that market handlers do not want. The adoption of any mechanism to assure the availability of the market's milk supply should respond to a particular marketing problem rather than be provided as a preliminary precautionary safeguard to prevent the development of any such problem. If such a situation manifests itself under III–A pricing in the future, Farmland or any other interested party could request a hearing on the issue.

Several interested parties repeated their request that handlers be allowed the flexibility to agree on III–A classification of milk. The procedure outlined in the initial tentative decision and now used under the three orders where the amendments have been implemented on an interim basis should be extended to all of the markets where III–A pricing is adopted. The record shows that in certain instances handlers could agree on a III–A classification of milk and the pool could be adversely impacted. Accordingly, the pro rata assignment should be provided.

At the second reopened hearing some of the proponents continued to support the original proposal, which included milk used to produce butter and NFDM in Class III–A. Nothing was presented by such proponents, however, to indicate why the findings and conclusions of the initial tentative decision regarding the classification and pricing of cream used to make butter should be overturned. Accordingly, III–A pricing would be limited to producer milk used to make NFDM.

Along that same line, the issue of pricing buttermilk powder also was discussed at the hearing. Buttermilk powder is a by-product of manufacturing butter. Any skim milk and/or butterfat in the buttermilk powder would be accounted for by handlers as milk and/or cream that was used to make butter. Since butter would continue to be a Class III product, the skim milk and butterfat in the buttermilk powder would be accounted for and priced in Class III.

At the reopened hearing and in briefs handlers in the Pacific Northwest repeated their claim that the "snubber" provisions should be retained under Order 124. They insisted that the record does not support an increase in the price of milk used to make cheese. As indicated in the original tentative decision in this proceeding, since the basic formula price reflects the value of milk used to make cheese the Class III price should be the basic formula price.

2. *The need for emergency action with respect to issue No. 1.* The reopened hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions exist to such an extent that omission of a recommended decision and the opportunity to file exceptions thereto under the rules of practice and procedure is warranted.

There was widespread support among the proponents at the reopened hearing for expedited action on this pricing issue. Many asked that amendments become effective at the earliest practicable date.

The urgency of dealing with this matter expeditiously was based primarily on the losses that processors were experiencing from manufacturing nonfat dry milk from the markets' reserve milk supplies. These losses were being incurred by handlers because of the wide disparity between the market value of powder and the Minnesota-Wisconsin prices. As a result of this same situation, emergency action was taken on the basis of the initial 1991 hearing to attempt to implement Class III–A pricing as expeditiously as possible in the three Federal orders where substantial quantities of reserve milk supplies are used to produce NFDM. Effective implementation of such pricing in the three orders was delayed until November 3, 1992 as a result of legal action that has not yet been fully resolved. Although price disparities evident during the course of the proceeding may or may not continue to persist in the future, action has been taken to provide relief in those areas where any pricing disparity causes significant and unavoidable problems for handlers and producers. Since such action has been taken, and in view of the contentious and litigious nature evident among concerned parties over this issue, further emergency action to extend the revised pricing formula to all markets involved in the proceeding should not be taken. Thus, the matter should be dealt with on a routine procedural basis with the issuance of a recommended decision and the opportunity for interested parties to file their exceptions to the Department's findings, conclusions, and/or proposed amendments to the order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they are amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135 and 1138

Milk marketing orders.

The authority citation for 7 CFR parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135 and 1138 continues to read as follows:

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

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1001.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1001.43(f) is republished.

§ 1001.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity to total receipts of bulk fluid milk products allocated to Class III milk at the plant.

* * * * *

3. Section 1001.50(d) is republished.

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1001.54 is revised to read as follows:

§ 1001.54 Annoucement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

PART 1002—MILK IN THE NEW YORK–NEW JERSEY MARKETING AREA

1. Section 1002.40 is amended by adding paragraph (d) to read as follows:

1002.40 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant or unit.

2. Section 1002.41 is amended by revising paragraph (d)(1)(iii) and adding paragraph (e) to read as follows:

§ 1002.41 Classes of utilization.

* * * * *

(d) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(e) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

3. Section 1002.50 is amended by adding paragraph (e) to read as follows:

§ 1002.50 Class prices.

* * * * *

(e) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (d) of this section for the applicable month.

§ 1002.52 [Amended]

4. Section 1002.52 is amended by changing the table heading in column C in paragraph (c) from "Classes II and III" to "Classes II, III and III–A."

5. Section 1002.56 is amended by revising paragraph (a)(2) to read as follows:

§ 1002.56 Announcement of class prices and butterfat differential.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month applicable at the 201–210 mile zone and at the 1–10 mile zone;

* * * * *

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.40 is amended by revising paragraph (c)(1)(iii) and republishing paragraph (d) to read as follows:

§ 1004.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1004.43 (d) is republished.

§ 1004.43 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

* * * * *

3. Section 1004.50 is amended by revising the section heading and by republishing paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1004.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1004.53 Announcement of class prices and component prices.

* * * * *

(a) * * *

(2) The Class II and Class III–A prices for the preceding month; and

* * * * *

5. Section 1004.60(k) is republished.

§ 1004.60 Handler's value of milk for computing uniform prices.

* * * * *

(k) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

* * * * *

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. Section 1005.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1005.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1005.43 is amended by adding paragraph (e) to read as follows:

§ 1005.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1005.50 is amended by adding paragraph (d) to read as follows:

§ 1005.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1005.54 is revised to read as follows:

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1005.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. Section 1007.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1007.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1007.43 is amended by adding paragraph (e) to read as follows:

§ 1007.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1007.50 is amended by adding paragraph (d) to read as follows:

§ 1007.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1007.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1011.43 is amended by adding paragraph (e) to read as follows:

§ 1011.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1011.50 is amended by adding paragraph (d) to read as follows:

§ 1011.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1030.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1030.43 is amended by adding paragraph (e) to read as follows:

§ 1030.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to the priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1030.50 is amended by adding paragraph (d) to read as follows:

§ 1030.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. Section 1033.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1033.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1033.43 is amended by adding paragraph (f) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1033.50 is amended by adding paragraph (d) to read as follows:

§ 1033.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1033.53 is revised to read as follows:

§ 1033.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1033.50(b).

PART 1036—MILK IN THE EASTERN OHIO–WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1036.43 is amended by adding paragraph (e) to read as follows:

§ 1036.43 General classification rules.

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1036.50 is amended by adding paragraph (d) to read as follows:

§ 1036.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1036.50(b).

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1040.43 is amended by adding (f) to read as follows:

§ 1040.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1040.50 is amended by adding paragraph (d) to read as follows:

§ 1040.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.22 is amended by revising paragraph (i)(1)(iii) to read as follows:

§ 1044.22 Additional duties of the market administrator.

* * * * *

(i) * * *

(1) * * *

(iii) The Class III and Class III–A prices for the preceding month; and

* * * * *

2. Section 1044.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1044.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

3. Section 1044.43 is amended by adding paragraph (f) to read as follows:

§ 1044.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

4. Section 1044.50 is amended by adding paragraph (d) to read as follows:

§ 1044.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1046.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1046.43 is amended by adding paragraph (e) to read as follows:

§ 1046.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1046.50 is amended by adding paragraph (d) to read as follows:

§ 1046.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1049.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1049.43 is amended by adding paragraph (e) to read as follows:

§ 1049.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1049.50 is amended by adding paragraph (d) to read as follows:

§ 1049.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1049.50(b).

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1065.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1065.43 is amended by adding paragraph (e) to read as follows:

§ 1065.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1065.50 is amended by adding paragraph (d) to read as follows:

§ 1065.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1068.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1068.43 is amended by adding paragraph (f) to read as follows:

§ 1068.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class IIII milk at the plant.

3. Section 1068.50 is amended by adding paragraph (d) to read as follows:

§ 1068.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, time an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b)

PART 1079—MILK IN THE IOWA MARKETING AREA.

1. Section 1079.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1079.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Classs III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1079.43 is amended by adding paragraph (e) to read as follows:

§ 1079.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1079.50 is amended by adding paragraph (d) to read as follows:

§ 1079.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. Section 1093.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1093.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1093.43 is amended by adding paragraph (e) to read as follows:

§ 1093.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1093.50 is amended by adding paragraph (d) to read as follows:

§ 1093.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. Section 1094.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1094.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1094.43 is amended by adding paragraph (e) to read as follows:

§ 1094.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1094.50 is amended by adding paragraph (d) to read as follows:

§ 1094.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. Section 1096.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1096.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produced nonfat dry milk.

2. Section 1096.43 is amended by adding paragraph (e) to read as follows:

§ 1096.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1096.50 is amended by adding paragraph (d) to read as follows:

§ 1096.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1096.50(b).

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. Section 1097.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1097.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1097.43 is amended by adding paragraph (e) to read as follows:

§ 1097.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1097.50 is amended by adding paragraph (d) to read as follows:

§ 1097.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1097.53 is revised to read as follows:

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. Section 1098.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1098.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1098.43 is amended by adding paragraph (e) to read as follows:

§ 1098.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1098.50 is amended by adding paragraph (d) to read as follows:

§ 1098.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1098.53 is revised to read as follows:

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class III price for the following month computed pursuant to § 1098.50(b).

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. Section 1099.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1099.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1099.43 is amended by adding paragraph (e) to read as follows:

§ 1099.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1099.50 is amended by adding paragraph (d) to read as follows:

§ 1099.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded the nearest cent.

4. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1106.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1106.43 is amended by adding paragraph (e) to read as follows:

§ 1106.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1106.50 is amended by adding paragraph (d) to read as follows:

§ 1106.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1108.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1108.43 is amended by adding paragraph (e) to read as follows:

§ 1108.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1108.50 is amended by adding paragraph (d) to read as follows:

§ 1108.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by

such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1124.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1124.43 (e) is republished.

§ 1124.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

* * * * *

3. Section 1124.50 is amended by revising paragraph (c) republishing paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1126.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1126.43 is amended by adding paragraph (e) to read as follows:

§ 1126.43 General classification rules.

* * * * *

(e) Class III–A milk be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1126.50 is amended by adding paragraph (d) to read as follows:

§ 1126.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. Section 1131.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1131.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1131.43 is amended by adding paragraph (e) to read as follows:

§ 1131.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1131.50 is amended by adding paragraph (d) to read as follows:

§ 1131.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. Section 1135.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1135.40 Classes of utilization.

* * * * *

(c) * * *
(1) * * *
(iii) Any milk product in dry form, except nonfat dry milk;
* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1135.43 is amended by adding paragraph (e) to read as follows:

§ 1135.43 General classification rules.
* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1135.50 is amended by adding paragraph (d) to read as follows:

§ 1135.50 Class prices.
* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. Section 1138.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1138.40 Classes of utilization.
* * * * *

(c) * * *
(1) * * *
(iii) Any milk product in dry form, except nonfat dry milk;
* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1138.43 is amended by adding paragraph (e) to read as follows:

§ 1138.43 General classification rules.
* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1138.50 is amended by adding paragraph (d) to read as follows:

§ 1138.50 Class prices.
* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1138.54 is revised to read as follows:

§ 1138.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

Dated: May 11, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–11617 Filed 5–18–93; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 231

[Regulation EE; Docket No. R-0801]

Netting Eligibility for Financial Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on a rule to include certain entities under the definition of "financial institution" in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 so that they will be covered by the Act's netting provisions. The Act authorizes the Board to expand the definition of "financial institution" to the extent consistent with the purposes of enhancing efficiency and reducing systemic risk in the financial markets.

DATES: Comments must be submitted on or before August 20, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0801, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 am and 5:15 pm and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B-1122 between 9 am and 5 pm.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Act) (Pub. L. 102-242, sections 401-407; 105 Stat. 2236, 2372-3; 12 U.S.C. 4401-4407) validates netting contracts among financial institutions. Parties to a netting contract agree that they will pay or receive the net, rather than the gross, payment due under the netting contract. The Act provides certainty that netting contracts will be enforced, even in the event of the insolvency of one of the parties. The Act's netting provisions, effective December 19, 1991, were designed to promote efficiency and reduce systemic risk within the banking system and financial markets.

The netting provisions apply to bilateral netting contracts between two financial institutions and multilateral netting contracts among members of a clearing organization.[1] Section 4402(9)

[1] "Clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) That provides clearing, netting, or settlement services for its members and—

Continued

of the Act defines "financial institution" to include a depository institution, a securities broker or dealer, or a futures commission merchant. Section 4402(9) also authorizes the Board to determine whether institutions that do not fall within the Act's definition may be considered financial institutions for purposes of the netting provisions. In addition, the Act's definition of "broker or dealer" (section 4402(1)(B)) includes any affiliate of a registered broker or dealer, to the extent consistent with the Act, as determined by the Board.

The Board could expand the "financial institution" definition either by case-by-case determinations or by rule-making. The Board believes it would be appropriate to establish, by rule, a category of entities that may be considered financial institutions under the Act. The Board would retain the discretion to make individual determinations in cases where entities do not meet the rule's requirements for a financial institution, but where application of the Act's netting provisions to their transactions would reduce systemic risk and increase efficiency in the financial markets.[2]

Scope of the proposed rule. The Board believes that, consistent with the purposes of the Act, the netting provisions of the Act should extend to all financial market participants that regularly enter into financial contracts, both as buyers and sellers, where the failure of the participant could create systemic problems in the financial markets. The failure of a significant market participant to meet its obligations at the end of the day could have serious systemic consequences in terms of losses to counterparties or market confidence and liquidity. The Board considered limiting coverage to institutions that are regulated by the federal or state government, that are affiliated with a defined financial institution, or that have a specific type of corporate charter. However, the Board believes that broad netting coverage would further the Act's goals to enhance efficiency and decrease systemic risk in the financial markets.

Market participants generally manage counterparty risk by setting bilateral exposure limits vis-a-vis other market participants. These limits may be influenced by a counterparty's affiliation, charter, or regulatory status. In some cases, these limits may constrain activity, particularly for participants that act as intermediaries and provide liquidity to the market. Extending the Act's netting provisions broadly to market obligations would allow participants to engage in more transactions within a given set of credit limits because those limits would be applied to the net, rather than the gross, amount of exposure to individual counterparties (including clearinghouses). Therefore, broader netting coverage would tend to loosen constraints on intermediaries, thereby enhancing market liquidity and reducing counterparty risk. Market participants could increase their gross transactions while maintaining the same or reducing exposure to bilateral credit risk. Accordingly, the Board believes that it is appropriate to extend netting coverage broadly to achieve enhanced liquidity and decreased risk in the financial markets. Market participants could then use their own judgment to account for a counterparty's affiliation, charter, or regulatory status when setting bilateral credit limits.

Furthermore, a test based on regulatory status, affiliation, or class of charter may foster presumptions about the risks posed by market participants covered by the test. For example, tying netting to a particular regulatory status may lead market participants to conclude that regulated entities are less risky than unregulated entities. In practice, such a conclusion may prove unwarranted. The Board also believes that an extension of the Act's coverage should be competitively neutral, if possible, in its effects on existing and potential financial market participants who may benefit from the increased liquidity and reduced systemic risk resulting from greater certainty about netting arrangements.

In addition, "regulated entity," "affiliation," and "charter" tests could be both over- and under-inclusive. For example, extending coverage only to government-regulated entities could exclude major unregulated market participants, such as swap dealers that are affiliates of securities broker-dealers, while at the same time covering entities that are regulated but that engage in little or no financial market activity that would benefit from netting. Similarly, applying an "affiliation" or "charter" test could exclude major market participants that are not affiliated with financial institutions or that lack a specific type of charter and could include marginal-to-inactive market participants. Thus, the Board believes that a "regulated entity," "affiliation," or "charter" test would be inappropriate.

Proposed rule. The proposed rule is designed to allow certain participants in markets for financial contracts, other than depository institutions, broker-dealers, and futures commission merchants (which are already covered by the Act), to receive the benefits of the Act's netting provisions. The proposal sets out a two-prong test for market participants, one regarding the nature its market activity and one regarding the volume of its activity, to determine whether it qualifies as a "financial institution" under the Act.

To meet the first prong of the test, a person must actively participate in a financial market for its own account and hold itself out as a counterparty that will engage in transactions both as a buyer and a seller in one or more financial markets (hereinafter such a person will be referred to as a "dealer"). A financial market is a market for a financial contract, which, in turn, means a "qualified financial contract" as defined in the Federal Deposit Insurance Act.[3] A "person" means any legal entity, including a corporation, unincorporated company, partnership, government unit or instrumentality, natural person, or any similar entity or organization.

A dealer must hold itself out to the market (such as through advertisements or company reports or by setting two-way price quotes) as an intermediary who will enter into transactions both as a buyer and seller in the market. For example, a dealer would offer either to make fixed-rate payments or to receive fixed-rate payments in the market for fixed/floating interest rate swaps. A dealer must engage in market transactions for its own account, rather than as agent or fiduciary for its customers. A dealer normally would not receive a brokerage commission but rather would rely on favorable price spreads as compensation.

(i) In which all members other than the clearing organization itself are financial institutions or other clearing organizations; or

(ii) Which is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(B) That performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

[2] The Board has already made individual determinations in the cases of three participants in the New York Clearing House Interbank Payments System (CHIPS). The three participants (American Express Bank Ltd., French American Banking Corporation, and Banesto Banking Corporation) do not meet the Act's definition of financial institution, but the Board determined that they may be considered financial institutions under the Act's netting provisions for purposes of their participation in CHIPS. In making this determination, the Board considered the substantial payments volume that flows through CHIPS, the steps taken to achieve settlement finality for CHIPS, and the systemic consequences of a CHIPS settlement failure.

[3] 12 U.S.C. 1821(e)(8)(D). For purposes of the definition of "qualified financial contract," the definition of a forward contract includes a spot contract (a contract with a maturity of 2 days or less).

A dealer must be engaged in the business of dealing on a regular basis, but dealing need not be its primary business activity. For example, a non-financial corporation may qualify as a dealer if it actively participates in the swaps or foreign exchange markets, even though the focus of its primary business may be unrelated to the financial markets. Such a corporation, which would maintain a "professional" market presence and would regularly receive solicitations from other market participants, is distinguishable from an "end-user," which may enter into certain types of financial contracts on a recurring basis but does not actively deal on both sides of the market.

The size of a dealer's financial market activity must be large enough to have the potential to cause systemic risk problems should it fail to settle for its obligations. As the second prong of its test, the Board has set threshold levels on financial market activities that a dealer must meet in order to be considered a financial institution for purposes of the Act. To satisfy the quantitative test, a dealer must:

(1) Have outstanding one or more financial contracts of a total gross dollar value of $1 billion in notional principal amount on any day during the previous 15-month period, with counterparties that are not its affiliates, or

(2) Have incurred total gross mark-to-market positions in one or more financial contracts of $100 million on any day during the previous 15-month period with unaffiliated counterparties.[4]

Once a market participant meets both prongs of the test, it would be considered a financial institution for the next 15 months. Any netting contract, as defined in section 402(14) of the Act, that the participant enters into during the period when it qualifies as a financial institution would be eligible for coverage under the Act's netting provisions.

The Board requests comment on whether the quantitative thresholds are too high or too low. The lower the thresholds, the greater the number of dealers that can qualify for netting, and the easier it will be for relatively large dealers to prove their netting qualifications to counterparties. Many institutions, such as small banks and credit unions, already qualify for netting under the terms of the Act, even though they would not meet the quantitative thresholds in the proposed rule. The Board would reexamine whatever thresholds it sets if market practice demonstrates that the thresholds are giving certain small institutions a competitive advantage. For example, small-volume market participants that qualify as financial institutions by virtue of the Act's definition could take advantage of the Act's netting provisions and therefore could gain a potential competitive advantage over small-volume dealers that are not covered by the Act and cannot meet the rule's quantitative thresholds.

To determine whether it is a financial institution on any given day, a dealer would apply the quantitative tests to financial contracts that it entered into during the previous 15 months. Under the proposed rolling 15-month period, a dealer could compile its trading data on an annual basis and, depending on the last date it met the threshold, could have as many as three additional months after the end of the annual reporting period to calculate the data. The Board requests comment on whether a longer or shorter period, or a fixed period such as a calendar year, would be appropriate.

There may be instances where a person engages in netting but does not qualify as a financial institution. Such a person may request that the Board, under its discretionary authority, determine that it is a financial institution. The request must include a statement as to how a determination that the person is a financial institution would enhance efficiency and reduce systemic risk in financial markets. The Board may certify such persons as financial institutions for general purposes (*e.g.*, for all types of netting contracts entered into by the institution) or for limited purposes (*e.g.*, for netting contracts within a certain clearing organization).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above. There are no reporting provisions or relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The proposed rule will apply only to entities with financial contracts of $1 billion in gross notional principle amount or gross mark-to-market positions of $100 million over a period of a year. Entities with a smaller level of market activity would not be covered by the Board's expanded definition of "financial institution." Many small market participants are included in the Act's definition of "financial institution" and thus are already covered by the netting provisions. The Board limited its expansion of the Act's definition to entities with a relatively large volume of activity because the lack of netting coverage for small entities is unlikely to affect overall market efficiency or systemic risk.

List of Subjects in 12 CFR Part 231

Banks, banking, Financial institutions, Netting.

For the reasons set out in the preamble, the Board proposes to add a new part 231 to Title 12, Chapter II of the Code of Federal Regulations to read as follows:

PART 231—NETTING ELIGIBILITY FOR FINANCIAL INSTITUTIONS

Sec.
231.1 Authority, purpose, and scope.
231.2 Definitions.
231.3 Qualification as a financial institution.

Authority: 12 U.S.C. 4402(1)(B) and 4402(9).

§ 231.1 Authority, purpose, and scope.

(a) *Authority.* This part (Regulation EE; 12 CFR part 231) is issued by the Board of Governors of the Federal Reserve System under the authority of sections 402(1)(B) and 402(9) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402(1)(B) and 4402(9)).

(b) *Purpose and scope.* The purpose of the Act and this part is to enhance efficiency and reduce systemic risk in the financial markets. This part expands the Act's definition of "financial institution" to allow more financial market participants to avail themselves of the netting provisions set forth in sections 401-407 of the Act (12 U.S.C. 4401-4407). This part does not affect the status of those financial institutions specifically defined in the Act.

§ 231.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236), as amended.

[4] In effect, a dealer could meet the quantitative test on a "rolling" basis. A dealer would qualify as a financial institution for 15 months after the most recent day it met the quantitative test.

(b) *Affiliate*, with respect to a dealer, means any person that controls, is controlled by, or is under common control with the dealer.

(c) *Financial contract* means a qualified financial contract as defined in section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)), as amended, except that a forward contract includes a contract with a maturity date two days or less after the date the contract is entered into (*i.e.*, a "spot" contract).

(d) *Financial market* means a market for a financial contract.

(e) *Gross mark-to-market positions* in one or more financial contracts means the sum of the absolute values of positions in those contracts, adjusted to reflect the market values of those positions in accordance with the methods used by the parties to each contract to price the contract.

(f) *Person* means any legal entity, including a corporation, unincorporated company, partnership, government unit or instrumentality, natural person, or any similar entity or organization.

§ 231.3 Qualification as a financial institution.

A person qualifies as a financial institution for purposes of sections 401-407 of the Act if it—

(a) Participates actively in a financial market for its own account and holds itself out as a counterparty that will engage in transactions both as a buyer and a seller in the financial market; and

(b)(1) Had one or more financial contracts of a total gross dollar value of $1 billion in notional principal amount outstanding on any day during the previous 15-month period with counterparties that are not its affiliates; or

(2) Incurred total gross mark-to-market positions (aggregated across counterparties) in one or more financial contracts of $100 million on any day during the previous 15-month period with counterparties that are not its affiliates.

By order of the Board of Governors of the Federal Reserve System, May 13, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–11835 Filed 5–18–93; 8:45 am]

BILLING CODE 6210–01–F

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Policy

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration (SBA) makes financial assistance available to individuals and businesses through direct and guaranteed loan programs. SBA proposes this rule to allow SBA and private lenders who participate with SBA in making guaranteed business loans to recover collection costs from borrowers who fail to satisfy their loan agreements. This proposed rule complies with the policies expressed in the Debt Collection Act of 1982, Public Law 97–365, and OMB Circular A–129. Now SBA is proposing this regulation to bring its collection practices more in line with government-wide and industry practices and to encourage uncooperative debtors to pay their debts promptly.

DATES: Comments must be submitted on or before June 18, 1993.

ADDRESSES: Send comments to Charles R. Hertzberg, Assistant Administrator for Financial Assistance, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–6490.

SUPPLEMENTARY INFORMATION: SBA makes financial assistance available to individuals and businesses through various direct and guaranteed loan programs. SBA proposed a rule to allow SBA or lenders making loans subject to SBA's guarantee to charge delinquent borrowers late fees to recoup the costs of collecting and processing late installment payments. The proposal was published at 54 FR 35488 (August 28, 1989). The rule would have permitted a fee to cover in-house costs, including overhead, subject to SBA approval. SBA received no comments on the proposed rule.

Preparation for operating under the new rule demonstrated the desirability of setting a cap on late fees to cover in-house costs and overhead rather than approving a fee for each lender. A precise statement will give borrowers notice of the obligations they are undertaking. It will allow lenders to follow the same collection procedures on their SBA-guaranteed loans as on the rest of their portfolio. They can determine the costs and responsibilities of participating with SBA in advance. It will alleviate an administrative burden on lenders and SBA of establishing the exact costs associated with each lender's practices. SBA has determined that a fee in the amount of 5% of the delinquent installment adequately compensates lenders for their collection costs and associated overhead as demonstrated by its common usage in the industry. It is also in line with the Debt Collection Act cap on penalties of 6%. The SBA or the lender may also charge for out-of-pocket expenses and services provided by third parties.

This effort complies with the policies expressed in the Debt Collection Act of 1982, Public Law 97–365, and OMB Circular A–129. The Debt Collection Act was enacted in 1982 to improve recoveries by the Federal Government. It created new collection mechanisms for creditor Agencies and set forth interest, fees and penalties to be charged uncooperative debtors. When SBA promulgated rules implementing collection mechanisms under the Debt Collection Act, it continued to rely on the Small Business Act and other preexisting authorities as a legal basis for the imposition on delinquent debtors of fees in connection with the collection of financial assistance.

Conforming language will be added to promissory notes used subsequent to the effective date of these regulations, and will affect only those loans made subsequent to the effective date of these regulations. Together, these changes will allow collection expenses, including late fees, to be assessed against a delinquent borrower whose obligation contains the above-referenced note provisions.

SBA is republishing this proposal for notice and comment because of the inclusion of a specified late fee.

Initial Regulatory Flexibility Analysis

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities. However, because the proposed rule represents a significant change from SBA's long-established practice, the following analysis is presented.

SBA's portfolio of loans made under section 7(a) of the Small Business Act (all of which were made to small entities) contains approximately 93,000 loans (not including loan guaranty purchases) of which almost 95 percent are paid current. About 15,000 new loans are made each year. If this rule becomes final, all notes for such loans will permit SBA to charge borrowers collection fees. Of approximately 5,000 loans which may be past due or delinquent at any one time, most will not incur substantial costs discussed in the proposed regulations. SBA expects that many borrowers who are not severely delinquent will make prompt payments to avoid late fees. Others will reschedule their debt or obtain protection under the Bankruptcy Code.

SBA concludes that in most cases the actual impact will be insignificant in relation to the principal balance owed

by each affected entity. SBA has determined that there is no alternative way to collect these fees other than by promulgating the proposed regulation and changing the language in SBA promissory notes and other documents. If there were an alternative, the economic impact would be the same as that under the proposed regulation.

SBA certifies that the proposed rule does not constitute a major rule for the purposes of Executive Order 12291. The change is not likely to result in an annual effect on the economy of $100 million or more.

If promulgated in final form, this proposed rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

The proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs/business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—[AMENDED]

1. The authority citation for part 120 is amended to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a)(h); 31 U.S.C. 3717(e).

2. Section 120.104–2(b) would be revised to read as follows:

§ 120.104–2 Service and commitment fees.

* * * * *

(b) *Late payments and prepayments.* Additional costs for servicing accounts of borrowers who have not made timely payments or have otherwise failed to comply with loan conditions may be charged to the borrower to the extent authorized by the Debt Collection Act of 1982, 31 U.S.C. 3717(e), the Federal Claims Collection Standards, 4 CFR part 101, or agreements with the borrower, including the Note. The amount of any late fee charged shall be limited to 5% of the late installment (to cover overhead and in-house costs), plus out-of-pocket expenses paid by the bank or SBA, plus the full amount charged for services provided by third parties as authorized by the Debt Collection Act and the Federal Claims Collection Standards. No prepayment fee or penalty may be charged.

* * * * *

Dated: May 7, 1993.

Dayton J. Watkins,

Acting Administrator.

[FR Doc. 93–11728 Filed 5–18–93; 8:45 am]

BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 18

Request for Comments Concerning Guides for the Nursery Industry

AGENCY: Federal Trade Commission.

ACTION: Extension of time within which to file public comments.

SUMMARY: The Federal Trade Commission (the "Commission") has requested public comments on its Guides for the Nursery Industry (58 FR 16139, March 25, 1993). The Commission solicited the comments as a result of receiving a petition seeking to amend one of the guides (Guide 6) and as part of its periodic review of rules and guides. The Commission has been requested to extend the time period within which to submit comments.

DATES: Written comments will be accepted until May 26, 1993.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as "16 CFR part 18—Comment.".

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant—Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION: On March 25, 1993, the Commission published a request for comments on its Guides for the Nursery Industry (58 FR 16139). The comments were to be accepted until April 26, 1993.

The Commission has been requested to extend the time period within which to submit comments. To allow interested persons the opportunity to supply information to the Commission, the Commission hereby extends the period within which to comment until May 26, 1993.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 18

Advertising, Nursery, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–11742 Filed 5–18–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of North Dakota's rules concerning permit application requirements, permit application approval, transportation facility plans, and performance standards regarding impoundment stability, bald and golden eagles, and coal mine waste impoundments. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t., June 18, 1993. If requested, a public hearing on the proposed amendment will be held on June 14, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t., on June 3, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed

below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918. Telephone: (307) 261–5776.

Edward J. Englerth, Director, Reclamation Division; Public Service Commission; Capitol Building; Bismarck, ND 58505–0165. Telephone: (701) 224–4092.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated April 21, 1993 (Administrative Record No. ND–P–01), North Dakota submitted a proposed amendment ("Amendment XVII") to its permanent program pursuant to SMCRA. North Dakota proposed this amendment mostly in response to program amendments required at 30 CFR 934.16(m), (o), (p), (q), (r), (s), (t), and (v), codified in the January 9, 1992, **Federal Register** (57 FR 827). That is, most of the proposed amendment is intended to change the rules of the North Dakota program to conform to Federal regulation requirements.

NDAC [North Dakota Administrative Code] 69–05.2–06–02(3)

North Dakota is proposing to require the submission of "[a] list of all violation notices" rather than "[a] violation list."

NDAC 69–05.2–09–01(4)

North Dakota is proposing to require submission of a plan for each support facility sufficient to demonstrate compliance with "sections 69–05.2–24–08 or 69–05.2–24–09 as applicable."

NDAC 69–05.2–10–03(1)

North Dakota is proposing that permits be denied in cases of violations of any North Dakota law or rule, SMCRA, any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection if incurred in connection with any surface coal mining operation, or if there are civil penalties outstanding under North Dakota Century Code section 38–12.1–08.

NDAC 69–05.2–10–03(4)

North Dakota is proposing that permits will not be issued if a finding is made that there exists a demonstrated pattern of willful violations of any North Dakota law or rule, SMCRA, or any state or federal program under SMCRA.

NDAC 69–05.2–13–08(3), (4)

North Dakota is proposing that no surface mining activity may be conducted in a manner that would result in the unlawful taking of bald or golden eagles, or their nests or eggs, and further that nothing in NDAC Article 69–05.2 authorizes the taking of endangered or threatened species or bald or golden eagles, nests, or eggs, in violation of the Endangered Species Act or the Bald Eagle Protection Act.

NDAC 69–05.2–16–09(13), (16)

North Dakota is proposing, for sedimentation ponds, that upstream side slopes of settled embankments not be steeper than 3:1 and downstream side slopes not be steeper than 2:1; and further that fill adjacent to structures, pipe conduits, and antiseep collars must be compacted by hand tamping or manually directed power tampers or vibrators to the density of the surrounding fill; but that in lieu of specific design requirements, the operator may demonstrate that the design of the structure has a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions.

NDAC 69–05.2–20–03(3), (4)

North Dakota is proposing that dams or embankments constructed of or impounding waste materials must be designed so that at least ninety percent of water stored during the design precipitation event can be removed within ten days; further, that ninety percent must be removed within ten days.

North Dakota is also proposing a few minor editorial revisions and one substantive change not in response to required amendments.

NDAC 69–05.2–15–04(3)

North Dakota is proposing to remove the requirement that the commission approve subsoil respreading prior to the redistribution of topsoil by the operator.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t., June 3, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may

request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–11863 Filed 5–18–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Amendment XVIII) would revise the North Dakota Century Code sections pertaining to permit denial for outstanding violations, preblast surveys, assistance available to small operators, the definition of "road" within the coal exploration program, and individual civil and criminal penalty provisions within the coal exploration program.

This notice sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t., June 18, 1993. If requested, a public hearing on the proposed amendment will be held on June 14, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t., on June 3, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128, Casper, WY 82601–1918. Telephone: (307) 261–5776.

Edward J. Englerth, Director, Reclamation Division; Public Service Commission; Capitol Building; Bismarck, ND 58505–0165. Telephone: (701) 224–4092.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated April 21, 1993, (Administrative Record No. ND–Q–01) North Dakota submitted a proposed

amendment ("Amendment XVIII") to its permanent program pursuant to SMCRA. The North Dakota proposed amendment reflects changes to the North Dakota Century Code (NDCC) Chapter 38–12.1 in response to the required program amendments 30 CFR 934.16 (l) and (y), published in the January 9, 1992 **Federal Register** (57 FR 827). In addition, North Dakota has proposed state-initiated changes to NDCC Chapter 38–14.1 reflecting 1992 changes (Energy Policy Act, Pub. L. 102–486) to the Small Operator Assistance Program in SMCRA Section 507(c), and changes to the requirements for preblasting surveys.

NDCC 38–14.1–21(5)

North Dakota proposes to delete a limitation (to the three-year period prior to application) for outstanding violations which require permit denial.

NDCC 38–14.1–24(13)(e)

North Dakota proposes to extend from ½ mile to one mile the distance for which permit applicants may be required to conduct preblast surveys of structures.

NDCC 38–14.1–37

North Dakota proposes to amend and reenact the statutory provisions governing its Small Operator Assistance Program, largely paralleling recent revisions to SMCRA Section 507(c). In particular, North Dakota is proposing:

(1) To increase the maximum annual tonnage allowed for "small operators" from one hundred thousand to three hundred thousand tons;

(2) To add to the services covered engineering analyses and designs necessary for the determination of the probable hydrologic consequences; the development of cross sections, maps, and plans; geologic drilling; the collection of cultural resource information and preparation of cultural resource mitigation plans; preblast surveys; and the collection of other site-specific resource information and the development of protection and enhancement plans for fish and wildlife and other environmental values that are required in permit applications;

(3) To provide for training small operators in permit application preparation and in regulatory compliance;

(4) To require reimbursements from operators for the costs of the permit application materials if the operator's produced tonnage exceeds three hundred thousand tons during the twelve months following permit issuance; and

(5) That no assistance would be available if the proposed operation would not be subject to paying reclamation fees under SMCRA.

NDCC 38–12.1–03

North Dakota proposes to amend and reenact the definitions section to include "road," proposed to be defined to mean a surface or right of way for purposes of land travel by land vehicles used in coal exploration; further, that a road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

NDCC 38–12.1–08(1), (2)

North Dakota proposes that directors, officers, and agents of corporate permittees who violate that chapter or any permit condition or regulation implementing that chapter be subject to civil penalties not to exceed five thousand dollars per day; further, that such directors, officers, and agents who knowingly commit such violations be subject upon conviction to criminal penalties of not more than ten thousand dollars or of imprisonment not to exceed one year.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t., June 3, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed

State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C.4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–11864 Filed 5–18–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 168

[CGD 91–202]

RIN 2115–AE10

Escort Vessels for Certain Oil Tankers; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: This document contains corrections to the notice of public hearings (CGD 91–202), which was published Thursday, April 29, 1993, (58 FR 25959). The notice informed of public hearings on escort vessels to be held in several locations, including Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Capt. Gerald T. Willis, Project Manager, Oil Pollution Act (OPA 90) Staff (G–MS(d)), at (202) 267–6732 between 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The April 29 notice informed the public of hearings being held in Anchorage and Valdez, Alaska, and Seattle, Washington. The purpose of the hearings is to take comments on defining the areas in Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington, where at least two escort vessels will be required for certain tankers. At these hearings, the Coast Guard is also encouraging comment on standards for escort vessels, other appropriate requirements for tanker escort operations, and other navigable waters of the United States where escorts may be required.

Need for Correction

In order to more readily facilitate teleconference arrangements for the hearing in Anchorage, the location has been changed.

Correction of Publication

Accordingly, the publication on April 29, 1993 of the notice of public hearings (CGD 91–202), which is the subject of FR Doc. 93–10048 is corrected as follows:

ADDRESSES: [Corrected]

1. On page 25959, in the first column, immediately following the "Addresses" heading, "The Anchorage, Alaska hearing will be held at the Anchorage Museum of History and Art, Main Auditorium, 121 West 7th Avenue, Anchorage, AK 99501" is corrected to read "The Anchorage, Alaska hearing will be held at the Anchorage Legislative Information Office, 3111 C Street, suite 150, Anchorage, AK 99503".

Dated: May 14, 1993.

L.J. Black,

Captain U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services

[FR Doc. 93–11861 Filed 5–18–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, and 635

RIN 1840–AB68

Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training and Resource Center Projects

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Cooperative Education Program. These amendments are needed to implement changes made in title VIII of the Higher Education Act of 1965 by the Higher Education Amendments of 1992 (1992 HEA Amendments).

DATES: Comments must be received on or before June 18, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20202–5251.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: John E. Bonas. Telephone: (202) 708–9407. Individuals who are hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations amend the regulations governing the Cooperative Education Program (34 CFR parts 631–635). These amendments are necessary to implement title VIII of the Higher Education Act of 1965 (HEA), as amended by the 1992 HEA Amendments (Pub. L. 102–325), enacted July 23, 1992.

The Cooperative Education Program provides grants to institutions of higher education to encourage institutions to offer their students work experiences that will aid these students in their future careers and support them financially while in school. The program is also designed to improve the quality of cooperative education through demonstration, research, and training projects.

The Cooperative Education Program addresses Goal 5 of the National Education Goals, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by enabling institutions to provide students paid work opportunities related to their academic or occupational objectives, thereby strengthening the connection between education and work.

Summary of Major Provisions

The following distinguishes between those amendments that incorporate the statutory language of the 1992 HEA Amendments and other amendments that (1) contain interpretations of statutory text or (2) provide standards and procedures for the program that were not stated in the statutory text. Commenters are requested to direct their comments to the latter two categories.

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Section 631.5 What Definitions Apply?

The Secretary proposes to add certain definitions to paragraph (b) of § 631.5. The Secretary would add definitions for "approved application," "comprehensive cooperative education program," "existing cooperative education program," "institutional matching funds," "minorities," "model cooperative education program," "national need," "nontraditional students," "special populations," "underrepresented populations," and "unduplicated cooperative education students."

The definition of "cooperative education" has been modified to delete reference to a waiver, approved by the Secretary, of compensation for cooperative education students. The Secretary has determined that such a waiver is inconsistent with the intent of the Cooperative Education Program.

Section 631.30 What Costs Are Allowable?

The Secretary proposes two additional allowable costs for (1) computer hardware, project-specific software, and other equipment related to project activities; and (2) cooperative education training expenses for secondary school personnel. These proposed allowable costs would be incorporated into § 631.30.

Section 631.31 What Costs Are Unallowable?

The Secretary proposes to clarify that Cooperative Education Program projects are educational training projects, for which the indirect cost rate is limited to the lesser of the grantee's actual indirect cost rate or eight percent of the projects' total direct costs, pursuant to Education Department General Administrative Regulations, 34 CFR 75.562.

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Section 632.1 What Is an Administration Project?

Section 803(a)(1) (A) and (B) of the HEA authorizes two types of Administration project grants: (1) Grants for new projects; and (2) grants for existing projects. The Secretary incorporates these two types of grants in the description of an Administration project into § 632.1.

Section 632.2 What Distinguishes a Grant for a New Project From a Grant for an Existing Project?

Section 803(a)(1) (A) and (B) of the HEA describes a grant for a new project and a grant for an existing project. A grant for a new project is a grant to an institution of higher education or a combination of institutions that has not received an Administration project grant in the 10-year period immediately preceding the date for which the institution or combination of institutions requests an Administration project grant.

The Secretary intends that an institution that is currently receiving funds for a multi-year non-competing continuation (NCC) award will continue to receive the grant award stipulated under their original grant. In order to accomplish this under the funding reservations listed in section 802(b) of the HEA, the Secretary has determined that an NCC application will be treated as a new project.

A grant for an existing project is awarded to an institution that is operating an existing cooperative education program. The Secretary has defined an "existing cooperative education program" to be any cooperative education program that (1) has operated for three successive academic years immediately preceding the year for which the institution applies for an Administration project grant and (2) has placed in paid public or private employment a minimum of 100 unduplicated students in the three years preceding the year for which the institution applies for a grant under the Administration program. The Secretary has incorporated these provisions into § 632.2 of the proposed regulations.

Section 632.3 Who Is Eligible for a Grant?

Section 803(a)(1)(A) of the HEA states that an institution of higher education or a combination of institutions is eligible to receive a grant for a new project. Section 803(a)(1)(B) of the HEA states that an institution of higher education is eligible to receive a grant for an existing project. The Secretary incorporates the eligibility criteria stated in the HEA into § 632.3 of the proposed regulations.

Section 632.5 What Types of Administration Projects Are Eligible for Funding?

Section 803(a) (1)(A) and (5) of the HEA limits the use of a grant for new projects and existing projects. Section 803(a)(1)(A) provides that grants for new projects should fund the planning, establishing, expanding, and carrying out of cooperative education programs. Section 803(a)(5) provides that grants for existing projects should fund (1) improving the quality of and expanding the participation in a cooperative education program; (2) providing outreach in new curricular areas; and (3) providing outreach to potential participants, including students from underrepresented populations and nontraditional students. The Secretary has incorporated these projects into § 632.5 of the proposed regulations.

Section 632.10 What Must Be Included in an Application?

Section 803(b) of the HEA lists certain informational items that must be included in an application for an Administration project grant. The Secretary proposes to incorporate a new § 632.10 outlining these requirements. This list would incorporate the six informational items added by the 1992 HEA Amendments. These recently added items include (1) a formal statement of commitment that the applicant must assure that the level of institutional support for the project will not be less than that expended during

the first year of Federal support; (2) a report that includes data describing the numbers of unduplicated student applicants in the project and unduplicated students placed in cooperative education jobs; (3) a description of the extent to which programs in the academic discipline for which the application is made have had a favorable reception by public- and private-sector employers; (4) a description of the extent to which the institution is committed to extending cooperative education to all students who can benefit; (5) a description of the plan that the applicant will use to evaluate the applicant's cooperative education program at the end of the project period; and (6) assurances that the institution will serve special populations.

Section 632.22 What Limitations Apply to the Amount of a Grant for a New Project?

Sections 803(a)(3)(A) and 803(c)(2) of the HEA list the limitations that apply to the amount of a grant for a new project. Section 803(a)(3)(A) states that in any fiscal year no grant for a new project may exceed $500,000. Section 803(c)(2) states that the Federal share of an Administration project for a new project may not exceed 85 percent, 70 percent, 55 percent, 40 percent, and 25 percent in the first through fifth years of the grant, respectively. The Secretary incorporates these limitations on the amount of a grant for a new project into § 632.22 of the proposed regulations.

Section 632.23 What Limitations Apply to the Amount of A Grant for an Existing Project?

Section 803(a)(3)(B)(i)–(iii) of the HEA lists the limitations that apply to grants for existing projects. Section 803(a)(3)(B)(i) authorizes the Secretary to award grants for an existing project to an eligible institution that has an approved application. The amount received by the institution from available funds in a fiscal year would bear the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution (excluding work experiences arranged under Demonstration Projects) bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions applying for grants.

The Secretary has defined an "approved application" in § 631.5(b) to be an application for a grant for an existing project that satisfies the definition of an existing project, and satisfies a minimum score based on the selection criteria. The minimum score will be determined by the Secretary on a year-to-year basis depending on the quality of the applications received by the Department.

Section 803(a)(3)(B)(ii) provides that no eligible institution of higher education may receive a grant for an existing project in any fiscal year that exceeds 25 percent of that institution's personnel and operating budget devoted to cooperative education for the preceding year. Section 803(a)(3)(B)(iii) provides that the minimum annual grant for an existing project is $1,000 and the maximum annual grant for an existing project is $75,000. The Secretary incorporates these limitations on the amount of a grant for an existing project into § 632.32 of the proposed regulations.

Section 632.32 What Are the Fiscal Requirements?

Section 803(d) of the HEA requires that the grantee not spend less for cooperative education in any fiscal year than the amount the grantee expended from non-Federal funds for cooperative education during the previous fiscal year. If the grantee fails to satisfy this maintenance-of-effort requirement, the Secretary may elect not to make grant payments to the recipient. The Secretary incorporates this fiscal requirement in § 632.23 of the proposed regulations.

Section 632.50 What Is the Duration of an Administration Project Grant?

Section 803(c)(1) (A) and (B) of the HEA provides limitations on the grant periods for both new projects and existing projects. The grant period for both types of grants is a maximum of five annual budget periods. The Secretary has determined that the five-year limitation provided for in the 1992 HEA Amendments should apply only to grants awarded after the enactment of the 1992 HEA Amendments. The Secretary incorporates these provisions into § 632.50 of the proposed regulations.

Section 632.51 How Are Grant Status and Funding Eligibility Determined When Institutions Merge?

The Secretary proposes a new § 632.51 addressing the issue of how grant status and funding eligibility are determined when institutions merge. The Secretary proposes that when institutions merge and take on a new identity, the Administration project grants received by any of the formerly separate institutions will be combined, reviewed, and renegotiated by the Department, if necessary. Funding eligibility would be determined by the formerly separate institution with the fewest years of remaining eligibility for funding. The regulation was added to impose a fair and objective rationale for determining the appropriate cost-match and maintenance-of-effort for a merged institution, where one or the other (or both) of the formerly separate institutions was a program grantee.

PART 633—COOPERATIVE EDUCATION—DEMONSTRATION PROJECTS

Section 633.21 What Priorities May the Secretary Establish?

The Secretary would afford priority status to model cooperative education projects (1) in the fields of science and mathematics for women and minorities who are underrepresented in these fields; (2) specializing in the development of technical and professional work force skills for nontraditional students and students from special or underrepresented populations; and (3) that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions. These priorities would be administered in accordance with 34 CFR 75.105(c).

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Section 634.21 What Priorities May the Secretary Use?

The Secretary would delete the priorities for (1) identification and assessment of the factors that influence the participation of students, faculty and employers in cooperative education and (2) alternatives to, and methods of, financing cooperative education without Federal support in public and private, 2-year and 4-year colleges and universities. The Secretary has decided that these categories no longer warrant priority status.

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Section 635.4 What Activities May the Secretary Fund?

Section 804(a)(2)(F) of the HEA authorizes the Secretary to provide grants under the Training and Resource Center program for projects that encourage model cooperative education programs in the fields of science and mathematics for women and minorities who are underrepresented in these fields. The Secretary would add this

type of project to the activities listed in § 635.4.

Executive Order 12291

These proposed 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 the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The entities that would be affected by these proposed regulations are institutions of higher education receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 631.20, 632.10, 632.20, 632.21, 633.20, 634.20, and 635.20 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 8.3 hours per response for 498 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3022, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980, and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would 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 in 34 CFR Parts 631 Through 635

College and universities, Cooperative education, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

Dated: May 12, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising parts 631 through 635 to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.
631.1 What is the Cooperative Education Program?
631.2 Who is eligible for a grant?
631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
631.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

Subpart C—How Does the Secretary Make an Award?

631.20 How does the Secretary evaluate an application?

Subpart D—What Conditions Must Be Met After an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

Authority: 20 U.S.C. 1133–1133c, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides—

(a) Grants to encourage institutions to offer their students work experiences that will aid them in their future careers and support them financially while in school; and

(b) Grants and contracts to improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133–1133c)

§ 631.2 Who is eligible for a grant?

Eligibility for each of the four kinds of projects authorized under this program is as follows:

(a) Eligibility for a Cooperative Education Administration project grant is described in 34 CFR 632.3.

(b) Eligibility for a Cooperative Education Demonstration project grant is described in 34 CFR 633.2.

(c) Eligibility for a Cooperative Education Research project grant is described in 34 CFR 634.2.

(d) Eligibility for a Cooperative Education Training and Resource Center project grant is described in 34 CFR 635.2.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.3 What kinds of projects may the Secretary fund?

Under the Cooperative Education Program, the Secretary awards—

(a) Cooperative Education Administration project grants, as described in 34 CFR 632.1;

(b) Cooperative Education Demonstration project grants, as described in 34 CFR 633.1;

(c) Cooperative Education Research project grants, as described in 34 CFR 634.1; and

(d) Cooperative Education Training and Resource Center project grants, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.4 What regulations apply?

The following regulations apply to the Cooperative Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(c) The regulations in this part.

(d) The regulations in the following parts, as applicable:

(1) 34 CFR part 632 (Cooperative Education Program—Administration Projects).

(2) 34 CFR part 633 (Cooperative Education Program—Demonstration Projects).

(3) 34 CFR part 634 (Cooperative Education Program—Research Projects).

(4) 34 CFR part 635 (Cooperative Education Program—Training and Resource Center Projects).

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Contract
ED
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR parts 631 through 635:

Alternating periods of study and employment means alternating academic terms of classroom study and periods of monitored and supervised paid public or private employment of a cooperative education student.

Approved application means an application from an institution for an Administration project grant for an existing project that—

(1) Satisfies the definition of an existing cooperative education program, as described in § 632.2(b); and

(2) Achieves a minimum score based on the selection criteria in § 632.20.

(Authority: 20 U.S.C. 1133b)

Combination of institutions of higher education means two or more institutions of higher education that have joined together for the purpose of applying for a grant under the Cooperative Education Program.

Comprehensive cooperative education program means an established program of cooperative education in an institution of higher education that—

(1) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(2) Enrolls in its cooperative education program all or nearly all of the institution's students who are eligible to participate and choose to participate in the cooperative education program;

(3) Enables students to participate in work experiences with a variety of employers; and

(4) Acts as a liaison between the institution and secondary schools to advise secondary school students of the availability and advantages of cooperative education.

Cooperative education means a method of education that includes—

(1) Alternating or parallel periods of study and employment;

(2) Formal work experience agreements among the institution of higher education, the student, and the employer;

(3) Work experiences that are of sufficient number and duration, as explained in § 632.30;

(4) Work experiences that are related to the students' academic programs of study or career goals;

(5) Student work experiences that are monitored, supervised, and evaluated; and

(6) Student employment that is compensated in conformity with Federal, State, and local laws.

Existing cooperative education program means a program of cooperative education in an institution of higher education that—

(1) Has operated a cooperative education program for three successive academic years immediately preceding the year for which the institution applies for Federal support under Parts 632–635; and

(2) Has placed in paid public or private employment a minimum of 100 unduplicated students in the three years immediately preceding the year for which the institution applies for support.

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education (or institution) means an educational institution as defined in section 1201(a) of the HEA, but excludes an institution that does not meet the provisions of section 1201(a)(3) of the HEA.

Institutional matching funds means the amount of funds contributed by an institution of higher education from non-Federal funds for the purposes of a project.

Minorities means Alaskan Natives, American Indians, Asian-Americans, Blacks (African-Americans), Hispanic Americans, Native Hawaiians, Pacific Islanders, or other ethnic groups underrepresented in cooperative education, as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary.

Model cooperative education program means a comprehensive cooperative education program recognized regionally or nationally for its effective or exemplary practices as validated by demonstrated positive outcomes and for the fact that its practices may be replicated in other institutions in the nation.

National need means demonstrated national demand for people in certain occupations, as determined by the Secretary.

Nontraditional students means students other than traditional college-going persons of 18–24 years of age. Nontraditional students include, but are not limited to, older adults, displaced workers, and homemakers returning to the work force.

Parallel periods of study and employment means periods of both classroom study and public or private employment of a student in a cooperative education program in which the student carries at least a half-time academic course load and works at least 20 hours per week in a cooperative education job.

Special populations means women, individuals with disabilities, and African-American, Mexican-American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamanian (Chamorro), or Northern Marianian students.

Student means a person—

(1) Enrolled in an institution of higher education other than by correspondence;

(2) Enrolled in—

(i) A graduate degree program;

(ii) An undergraduate degree program of not less than two academic years; or

(iii) An undergraduate certificate program of not less than one academic year if the program is provided by an institution of higher education that offers a two-year program that is acceptable for full credit toward a bachelor's degree; and

(3) Carrying at least one half the academic workload normally required of persons who are full-time degree candidates.

Underrepresented populations means persons of ethnic or racial groups whose participation in the skilled, technical, or professional work force of the United States is less than their proportionate representation in the general population.

Unduplicated cooperative education student means a student who—

(1) Has been accepted into a cooperative education program;

(2) Has been placed in a cooperative education job; and

(3) Is counted only once for each year he or she is either enrolled in a cooperative education program or engaged in a cooperative education work experience.

(Authority: 20 U.S.C. 1133, 1133c)

Subpart B—How Does One Apply for an Award?

§ 631.10 What limitations apply to the number of applications that may be submitted?

For any single fiscal year, the Secretary accepts no more than one application from the same applicant under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 631.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the informational requirements for an Administration project application in § 632.10 of this chapter and the selection criteria in §§ 632.20, 632.21, 633.20, 634.20, or 635.20 of this chapter, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under Administration Projects that address the special consideration factors in § 632.21 of this chapter.

(d) The Secretary funds an application from a public or private agency or organization under Parts 633, 634, and 635 of this chapter only if the application receives a score of 75 or more points.

(Authority: 20 U.S.C. 1133b, 1133c)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Federal funds and institutional matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education project staff.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project-related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary school and undergraduate postsecondary students.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

(k) Computer hardware, project-specific software, and other equipment related to project activities.

(l) Cooperative education training expenses for secondary school professional personnel.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.31 What costs are unallowable?

(a) A grantee shall not use Federal funds or institutional matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Admissions activities to invite prospective students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations directly related to cooperative education.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning the feasibility of establishing a cooperative education program.

(7) Indirect costs in excess of eight per cent of total direct costs.

(b) A grantee who is awarded a Demonstration, Research, or Training and Resource Center project grant shall use Federal funds only to supplement and, to the extent possible, increase the level of funds that otherwise would have been available from non-Federal sources to conduct the approved activities. The grantee may not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133b, 1133c)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.

632.1 What is an Administration project?
632.2 What distinguishes a new project from an existing project?
632.3 Who is eligible for a grant?
632.4 What students are eligible to participate?
632.5 What types of Administration projects are eligible for funding?
632.6 What regulations apply?

Subpart B—How Does One Apply for an Award?

632.10 What must be included in an application?

Subpart C—How Does the Secretary Make an Award?

632.20 What selection criteria does the Secretary use to evaluate an application?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the amount of a grant for a new project?
632.23 What limitations apply to the amount of a grant for an existing project?

Subpart D—What Conditions Must Be Met After An Award?

632.30 What are the minimum requirements for the frequency and duration of work experiences?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

632.50 What is the duration of an Administration project grant?
632.51 How are grant status and funding eligibility determined if institutions merge?

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

Subpart A—General

§ 632.1 What is an Administration project?

(a) An Administration project must be designed to provide students enrolled at institutions of higher education with opportunities to participate in cooperative education.

(b) Under this part, the Secretary awards two types of grants:

(1) Grants for new projects, as described in § 632.2(a).

(2) Grants for existing projects, as described in § 632.2(b).

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.2 What distinguishes a new project from an existing project?

(a) The Secretary awards a grant for a new project to an institution, or a combination of institutions, that has not received an Administration project grant in the 10-year period immediately preceding the date for which the institution or combination of institutions requests a grant under this part.

(b) The Secretary awards a grant for an existing project to an institution that is operating an existing cooperative education program.

(Authority: 20 U.S.C 1133a, 1133b)

§ 632.3 Who is eligible for a grant?

The following are eligible to apply for an Administration project grant:

(a) An institution of higher education, or a combination of institutions, is eligible to apply for a grant for a new project.

(b) An institution of higher education is eligible to apply for a grant for an existing project.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.4 What students are eligible to participate?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 632.5 What types of Administration projects are eligible for funding?

(a) The Secretary awards a grant for a new project to fund the following activities:

(1) Planning cooperative education programs.

(2) Establishing cooperative education programs.

(3) Expanding cooperative education programs.

(4) Carrying out cooperative education programs.

(b) The Secretary awards a grant for an existing project to fund the following activities:

(1) Improving the quality of and expanding the participation in a cooperative education program.

(2) Providing outreach in new curricular areas.

(3) Providing outreach to potential participants, including nontraditional students and students from underrepresented populations.

(Authority: 20 U.S.C. 1133b)

§ 632.6 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—How Does One Apply for an Award?

§ 632.10 What must be included in an application?

An application for a grant must—

(a) Describe the project for which a grant is requested.

(b) Identify and describe each portion of the project that will be performed by a nonprofit organization or institution other than the applicant and the compensation to be paid to each organization or institution.

(c) Contain assurances that the applicant will not spend less than the amount expended for cooperative education in any fiscal year than the applicant expended for cooperative education during the previous fiscal year.

(d) Describe the plans the applicant will use to ensure that—

(1) The project will continue beyond the 5-year period of Federal assistance described in § 632.50; and

(2) The applicant will fund the project, from non-Federal sources, at a level that is not less than the total amount expended by the applicant during the first year the project receives funding under this part.

(e) Contain a formal statement of the commitment in paragraph (d) of this section.

(f) Provide that, in the case of an institution that provides a 2-year program which is acceptable for full credit toward a bachelor's degree, the program will be available to students who are certificate or associate degree candidates and who carry at least one-half the normal full-time workload.

(g) Provide that the applicant will—

(1) Develop reports to ensure that the applicant is complying with the requirements of this part, including reports for the second and each succeeding fiscal year for which the applicant receives a grant. These reports must include data describing the impact of the project in the preceding fiscal year, including the—

(i) Number of unduplicated student applicants in the project;

(ii) Number of unduplicated students placed in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students;

(iv) Income of students derived from working in cooperative education jobs; and

(v) Increase or decrease in the number of unduplicated students placed in cooperative education jobs in each fiscal year compared to the previous fiscal year; and

(2) Maintain reports that are essential to ensure that the applicant is complying with the requirements of this part, including the notation of cooperative education employment on the student's transcript.

(h) Describe the extent to which the applicant's project has had a favorable reception by public and private-sector employers.

(i) Describe the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit.

(j) Describe the plans the applicant will carry out to evaluate the applicant's project at the end of the project period.

(k) Provide fiscal control and fund accounting procedures that are necessary to assure the proper disbursement of, and accounting for, Federal funds received under this part.

(l) Demonstrate a commitment to serving special populations.

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 632.20 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application for a grant under this part:

(a) *Institutional commitment.* (10 points). The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education as reflected, for example, by the inclusion of cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The support of the chief executive officer, other key administrators, faculty, and governing board for the project, including their involvement in planning and developing the project.

(b) *Plan of operation.* (60 points). The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable—

(i) The activities to be conducted by the applicant and employers and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedules to meet the needs of the students in the project;

(iv) Involvement and extent of participation of academic departments, divisions, or colleges within the institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (10 points) based on—

(i) The relevance of the work experiences to the students' academic programs of study or career objectives;

(ii) The work and study calendars for alternating or parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) Proposed procedures for administering the project, including fiscal control and fund accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points). The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce quantifiable data that demonstrate the impact of the project; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the notation of cooperative education employment on students' transcripts, and the—

(i) Enrollment and placement of unduplicated cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs on graduation;

(ii) Income earned by students engaged in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students enrolled in the project; and

(iv) Increase or decrease from year to year in the number of unduplicated students engaged in cooperative education work experiences as a result of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project and the number of students engaged in cooperative education jobs; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution that assists in the development or expansion of the project.

(Authority: 20 U.S.C. 1133b)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success on the basis of the following factors:

(a) The extent to which public and private-sector employers support the project and accept students for jobs that are related to the students' respective academic programs and career interests (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students and the number of cooperative education students they hire for permanent positions after graduation.

(b) The applicant's specific plan for continuing cooperative education after the termination of Federal financial assistance, including a formal statement of institutional commitment that assures that the applicant will continue the cooperative education program beyond the period of Federal assistance at a level not less than the total amount expended for the project during the first year of Federal assistance, and that refers specifically to the sources of support, amount of funds, personnel, and other resources that will be committed to the project (5 points).

(c) The extent to which the applicant is committed to extending opportunities for participation in cooperative education for all eligible students who can benefit from this form of education (5 points).

(d) The institution's demonstrated commitment to serving special populations (5 points).

(Authority: 20 U.S.C. 1133b)

§ 632.22 What limitations apply to the amount of a grant for a new project?

(a) In any fiscal year, a grant for a new project may not exceed $500,000.

(b) The Federal share for a grant for a new project may not exceed—

(1) 85 percent of the cost of carrying out the project in the first year the grantee receives the grant;

(2) 70 percent of the cost of the project in the second year the grantee receives the grant;

(3) 55 percent of the cost of the project in the third year the grantee receives the grant;

(4) 40 percent of the cost of the project in the fourth year the grantee receives the grant; and

(5) 25 percent of the cost of the project in the fifth year the grantee receives the grant.

(Authority: 20 U.S.C. 1133b)

§ 632.23 What limitations apply to the amount of a grant for an existing project?

(a) The Secretary awards a grant for an existing project to an eligible institution that has an approved application.

(b) In any fiscal year, an institution that satisfies the requirements of paragraph (a) of this section receives an amount of available funds in a fiscal year bearing the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution (excluding work experiences arranged under Demonstration Projects) bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions applying for grants.

(c) No eligible institution of higher education may receive a grant for an existing project in any fiscal year that exceeds 25 percent of that institution's personnel and operating budget devoted to cooperative education for the preceding year.

(d) The minimum annual grant for an existing project is $1,000.

(e) The maximum annual grant for an existing project is $75,000.

(Authority: 20 U.S.C. 1133b)

Subpart D—What Conditions Must Be Met After an Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) An Administration project must provide at least one work experience for participating graduate students and undergraduate certificate students and at least two work experiences for other participating undergraduate students.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration that is consistent with the grantee's academic calendar, but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(c) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133b, 1134, 1134a)

§ 632.31 How are student work experiences evaluated?

During a student's work experiences, the grantee must assess the student's progress to ensure that the work experiences satisfy the student's and the Administration project's objectives.

(Authority: 20 U.S.C. 1133b)

§ 632.32 What are the fiscal requirements?

(a) A grantee may not expend less for cooperative education in a fiscal year than the amount the grantee expended from non-Federal funds for cooperative education during the previous fiscal year.

(b) If the Secretary determines that a grantee has failed to maintain the fiscal effort described in paragraph (a) of this section, the Secretary may elect not to make further grant payments to the recipient.

(Authority: 20 U.S.C. 1133b)

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

§ 632.50 What is the duration of an Administration project grant?

(a) The duration of a grant for a new project or an existing project is a maximum of five annual budget periods.

(b) The five-year limitation in paragraph (a) of this section applies to grants awarded after September 30, 1992.

(Authority: 20 U.S.C. 1133b)

§ 632.51 How are grant status and funding eligibility determined if institutions merge?

If two or more institutions of higher education merge to assume a new identity, the Secretary may review and renegotiate grants received under this part by any of the formerly separate institutions. The Secretary determines funding eligibility on the basis of the formerly separate institution whose grant has the least amount of annual budget periods remaining within the five-year limit.

(Authority: 20 U.S.C. 1133b)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.

633.1 What is a Demonstration project?
633.2 Who is eligible for a grant?
633.3 Who is eligible to participate in a Demonstration project?
633.4 What types of Demonstration projects does the Secretary fund?
633.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?
633.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Demonstration project?

A Demonstration project must be designed to demonstrate or determine the feasibility or value of innovative cooperative education projects, as well as to disseminate information relating to innovative cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 633.2 Who is eligible for a grant?

The following are eligible to apply for a Demonstration project grant:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 633.3 Who is eligible to participate in a Demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 633.4 What types of Demonstration projects does the Secretary fund?

The Secretary makes awards for projects that—

(a) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not been fully evaluated;

(b) Demonstrate or determine the feasibility of a proposed innovative method of cooperative education; or

(c) Disseminate information on effective innovative projects.

(Authority: 20 U.S.C. 1133c)

§ 633.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points). The Secretary reviews each application to evaluate the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not yet been fully evaluated;

(ii) Demonstrate or determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on effective innovative projects.

(3) Measurable objectives that relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points). The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) The schedule for implementing the project's activities and meeting its objectives that shows the use of resources in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points). The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used; and

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable, considering the project's objectives, design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Authority: 20 U.S.C. 1133c)

§ 633.21 What priorities may the Secretary establish?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Model cooperative education projects in the fields of science and mathematics for women and minorities who are underrepresented in those fields.

(2) Model cooperative education projects specializing in developing technical and professional work force skills for nontraditional students and students from special or underrepresented populations.

(3) Model cooperative education projects that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions.

(b) The Secretary announces these priorities in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1133c)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.

634.1 What is a Research project?
634.2 Who is eligible for a grant?
634.3 What types of Research projects does the Secretary fund?
634.4 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

634.20 What selection criteria does the Secretary use to evaluate Research project applications?
634.21 What priorities may the Secretary use?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 634.1 What is a Research project?

A Research project must conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133c)

§ 634.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 634.3 What types of Research projects does the Secretary fund?

(a) The Secretary makes awards under this part for Research projects that include, but are not limited to, the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach in assisting students to prepare for careers and to finance their educational pursuits.

(3) Developing better cooperation among secondary schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133c)

§ 634.4 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate Research project applications?

The Secretary uses the following selection criteria in evaluating applications under the Cooperative Education Research program:

(a) *Relevancy of research.* (20 points). The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points). The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods;

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points). The Secretary considers the quality and the effectiveness of—

(1) The management plan, including the extent to which the plan ensures proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points). The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(e) *Quality of key personnel.* (20 points). The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points). The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points). The Secretary reviews the budget to assure that it is reasonable considering the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Authority: 20 U.S.C. 1133c)

§ 634.21 What priorities may the Secretary use?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(i) Initial job placement.

(ii) Job advancement.

(iii) Long-term earnings.

(2) Assessing the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(3) Assessing the impact of comprehensive cooperative education projects on—

(i) The institution;

(ii) Students at the institution;

(iii) Faculty;

(iv) Employment opportunities; and

(v) Factors influencing the successes and failures of comprehensive cooperative education projects.

(4) Identifying and assessing incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) The Secretary announces these priorities in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1133c)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.
635.1 What is a Training and Resource Center project?
635.2 Who is eligible for a grant?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?
635.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Training and Resource Center project?

A Training and Resource Center project must be designed to train and assist individuals who participate in, or are planning to participate in, planning, establishing, and administering cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 635.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, whenever a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in planning, establishing, or administering a cooperative education project are eligible to participate in training projects assisted under this part. These individuals may include—

(a) Presidents and administrators of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(c) Secondary school personnel responsible for career and academic guidance; and

(d) Employers or prospective employers of students who are involved in a cooperative education project.

(Authority: 20 U.S.C. 1133c)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards for projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A grantee must conduct one or more of the following activities:

(1) Training for project directors, coordinators, faculty members, employers, and other persons in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education programs in conjunction with other activities described in this section.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects that furnish education and training in occupations for which there is a national need.

(5) Supporting partnerships in which an existing comprehensive cooperative education program assists one or more institutions to—

(i) Improve their existing cooperative education program; or

(ii) Establish, expand, or improve a comprehensive cooperative education program.

(6) Encouraging model cooperative education programs in the fields of science or mathematics for women or minorities who are underrepresented in these fields.

(Authority: 20 U.S.C. 1133c)

§ 635.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in § 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points). The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, including, but not limited to, need for—

(1) Training, technical assistance, and materials in its geographical area or in the nation;

(2) Training partnerships to assist in developing cooperative education programs; or

(3) Developing model cooperative education programs.

(b) *Purpose and scope of training and functions of the resource center.* (15 points). The Secretary considers the extent to which the purpose of the project and the scope of the project activities to be provided will address the needs of the constituency selected to receive training and information. The Secretary makes this determination based on needs analysis data.

(c) *Plan of operation.* (36 points). The Secretary considers—

(1) The extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures to be used in conducting the project and the commitment of personnel to be involved in conducting the project;

(2) The extent to which the objectives and proposed outcomes of the project relate to the project's purpose and the results of the needs assessment;

(3) The quality of the actual design of the project, including plans for dealing with unexpected problems and evaluation results;

(4) The quality of the activities to be conducted and their relationship to the criteria in paragraph (c)(2) of this section;

(5) The quality of the methods and procedures to be used in conducting the project's training plan;

(6) The proposed schedule for conducting project activities and training sessions;

(7) The extent to which the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition;

(8) The quality of the plan for managing the project; and

(9) The extent to which the proposed project has promise of fulfilling the proposed objectives and current need for the project.

(d) *Quality of key personnel.* (9 points). The Secretary considers—

(1) The qualification and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (6 points). The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities;

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available and adequate for conducting the project's activities.

(f) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(g) *Budget.* (3 points). The Secretary considers the extent to which the budget is reasonable considering the scope of training and the plan of operation.

(Authority: 20 U.S.C. 1133c)

§ 635.21 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1133c)

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7066]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer for each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community

listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MISSISSIPPI	
City of Richland, Rankin County	
Richland Creek:	
Just upstream of Illinois Central Railroad	*272
Just upstream of U.S. Highway 49	*272
Pearl River:	
About 9.1 miles downstream of Illinois Central Railroad	*267
Just upstream of Interstate 20 East Bound	*274
Pearl River Tributary 1:	
About 0.9 mile downstream of Old U.S. Highway 49	*268
About 1,900 feet downstream of Old U.S. Highway 49	*268
Pearl River Tributary 2:	
About 2,000 feet downstream of Neely Road	*270
Just upstream of Old U.S. Highway 49	*271
Squirrel Branch:	
About 900 feet downstream of Illinois Central Railroad	*271
About 400 feet downstream of U.S. Highway 49	*271
Conway Slough:	
About 1,600 feet downstream of Illinois Central Railroad	*273
Just landward of East Jackson Levee	*263
Maps available for inspection at Richland City Hall, 371 Scarborough Street, Richland, Mississippi.	
Send comments to the Honorable Lester J. Spell, Jr., Mayor of the City of Richland, Rankin County, City Hall, P.O. Box 160127, Richland, Mississippi 39218.	
OHIO	
Munroe Falls (village) (Summit County)	
Cuyahoga River:	
Approximately 900 feet downstream of downstream corporate limits	*999
Approximately 50 feet upstream of upstream corporate limits	*1,007
Maps available for inspection at the City Hall, 43 Munroe Falls Avenue, Munroe Falls, Ohio.	
Send comments to the Honorable Gerald R. Hupp, Mayor of the Village of Munroe Falls, Summit County, 43 Munroe Falls Avenue, Munroe Falls, Ohio 44262.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Norwich, city (New London County).	Trading Cove Brook	Approximately 0.4 mile downstream of the Connecticut Turnpike.	*30	*
			Approximately 0.3 mile downstream of confluence of confluence of Goldmine Brook.	*57	*56
		Hunter Brook	Approximately 1,080 feet upstream of Hunter Road upstream crossing.	None	*72
			At confluence with Shetucket Road	*41	*36
		Yantic River	Approximately 50 feet upstream of Yantic Mill Dam No. 2.	*78	*77
			Approximately 500 feet upstream of Conrail Railroad Bridge No. 4.	*119	*120
		Tributary B	At confluence with Yantic River	*88	*86
			Approximately 790 feet upstream of confluence with Yantic River.	*88	*87
		Bobbin Mill Brook	At confluence with Yantic River	*88	*86

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 63 feet upstream of confluence with Yantic River.	*88	*87
		Norwichtown Brook	At Sturtevant Street	*93	*91
			At downstream side of Sholes Avenue	*93	*91

Maps available for inspection at the City Clerk's Office, City Hall, 100 Broadway, Norwich, Connecticut

Send comments to Mr. William Tallman, Norwich City Manager, New London County, City Hall, 100 Broadway, Norwich, Connecticut 06360.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
Florida	Unincorporated areas, Dade County.	Canal C–100A	Approximately 100 feet east of intersection of S.W. 77th Court and SW 155 Street.	*10	*11
			At intersection of SW 78th Court and SW 155th Street.	*11	*10
		Canal C–100C	Approximately 100 feet south Killian Drive	*8	*9
		Canal 100A	At intersection of SW 92nd Avenue and SW 102nd Street.	*8	*9
		Spur Canal No. 1	Approximately 700 feet north of the intersection of NW 157th Street and NW 17th Place.	None	*6

Maps available for inspection at the Dade County Department of Water Control, 111 NW First Street, 13th Floor, Miami, Florida.

Send comments to Mr. Carlos Espinoza, Assistant Director, Department of Environmental Resource Management, Metro Dade Center, suite 1310, 111 NW First Street, Miami, Florida 33128.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
Indiana	Anderson, city, Madison County.	Boland Drainage Ditch	At the Road 400 South	*859	*857
			Approximately 1,500 feet upstream of Madison Avenue.	None	*874

Maps available for inspection at the Anderson City Planning Department, 120 East Eighth Street, Anderson, Indiana.

Send comments to The Honorable J. Mark Lawler, Mayor of the City of Anderson, Madison County, 120 Eighth Street, P.O. Box 2100, Anderson, Indiana 46018.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
Minnesota	Pine Island (city), Goodhue County.	North Branch Middle Fork Zumbro River.	Approximately 380 feet downstream of Main Street.	*997	*996
			Approximately 400 feet upstream of Township Road.	None	*1,005

Maps available for inspection at the City Hall, Pine Island, Minnesota.

Send comments to the Honorable Ken Edstrom, Mayor of the City of Pine Island, Goodhue County, P.O. Box 1000, Pine Island, Minnesota 55963.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
Mississippi	Canton, city (Madison County).	Batchelor Creek	Approximately 2 miles above confluence with Tilda Bogue.	*217	*216
			Approximately 0.5 mile upstream of State Route 43.	None	*253
		Batchelor Creek Tributary 1.	Approximately 550 feet upstream of confluence with Batchelor Creek.	*221	*222
			Approximately 0.53 mile upstream of State Route 16.	None	*248
		Stream E	At confluence with Bear Creek	*226	*224
			Approximately 0.2 mile downstream of U.S. Route 51.	*226	*225
		Little Bear Creek	At confluence with Bear Creek	*230	*231
			Approximately 500 feet upstream of confluence with Bear Creek.	*230	*231
		Batchelor Creek Tributary 2.	At confluence with Batchelor Creek	*234	*232
			Approximately 0.2 mile upstream of confluence with Batchelor Creek.	*235	*234

Maps available for inspection at the City Clerk's Office, City Hall, 226 East P Street, Canton, Mississippi.

Send comments to the Honorable Sidney Runnels, Mayor of the City of Canton, Madison County, P.O. Box 53, Canton, Mississippi 39046.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
Mississippi	Jackson, city (Hinds, Rankin, and Madison Counties).	Pearl River	At downstream corporate limits	*283	*286
			At upstream corporate limits	*283	*286
		Cany Creek	At confluence with Peal River	*268	*270
			Approximately 450 feet upstream of County T.V. Road.	None	*341

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Hardy Creek	At confluence with Pearl River	*269	*272
			Approximately 0.19 mile upstream of Greenwood Avenue.	*271	*272
		Three Mile Creek	At confluence with Pearl River	*269	*272
			Approximately 0.02 mile downstream of Illinois Central Gulf Railroad.	*271	*272
		Lynch Creek	At confluence with Pearl River	*272	*274
			Approximately 500 feet upstream of 2nd Illinois Central Gulf Railroad crossing.	*273	*274
		Town Creek	At confluence with Pearl River	*273	*275
			At downstream side of Interstate Route 220.	*346	*349
		Town Creek Tributary No. 2.	At confluence with Town Creek	*323	*325
			Approximately 0.20 mile upstream of confluence with Town Creek.	*324	*325
		Town Creek Tributary No. 3.	At confluence with Town Creek	*282	*281
			Approximately 400 feet upstream of Marion Dunbar Street.	None	*331
		Town Creek Tributary No. 4.	Approximately 250 feet upstream of confluence with Town Creek.	*287	*288
			Approximately 100 feet downstream of Overbrook Drive.	*336	*337
		Stream 1	At confluence with Pearl River	*282	*284
			Approximately 0.25 mile downstream of Braeburn Drive.	*283	*284
		Trahon Creek	At the downstream corporate limits	*277	*279
			Approximately 100 feet downstream of Henderson Road.	*319	*320
		Trahon Creek Tributary No. 1.	At confluence with Trahon	*291	*290
			Approximately 120 feet upstream of Lakeshore Road.	*303	*304
		Hanging Moss Creek Tributary No. 4.	Approximately 300 feet upstream of confluence with Hanging Moss Creek.	*293	*294
			Approximately 350 feet upstream of Old Agency Road.	None	*372
		Purple Creek	At confluence with Pearl River	*281	*283
			Approximately 450 feet upstream of Old Canton Road.	*283	*283
		Big Creek	Approximately 300 feet upstream of downstream corporate limits.	*319	*318
			At upstream side of State Route 18	*364	*362
		Big Creek Tributary No. 5	At confluence with Big Creek	*332	*333
			At downstream side of State Route 18	None	*386
		Big Creek Tributary No. 6	At confluence with Big Creek Tributary No. 5.	None	*356
			At the upstream corporate limits	None	*402
		Big Creek Tributary No. 7	At confluence with Big Creek	*341	*340
			At upstream crossing of State Route 18	None	*361
		Town Creek Tributary No. 5.	At confluence with Town Creek	*295	*291
			Approximately 100 feet downstream of Illinois Central Gulf Railroad.	*359	*360
		Eubanks Creek	At confluence with Pearl River	*277	*278
			Approximately 425 feet downstream of Wood Dale Drive.	*277	*278
		Twin Lakes Creek G	Upstream side of Kimwood Drive	*316	*317
		Twin Lakes H	At confluence with Pearl River	*280	*281
			Approximately 0.3 mile upstream of confluence with Pearl River.	*280	*281
		Belhaven Creek	At confluence with Pearl River	*276	*277
			Approximately 185 feet upstream of U.S. Route 55.	*276	*277
		Hanging Moss Creek	At confluence with Pearl River	*281	*283
			Approximately 400 feet upstream of Ridgewood Road.	*282	*283

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		White Oak Creeek (Tributary 3 to Hanging Moss Creek).	At confluence with Hanging Moss Creek .	*281	*283
			Approximately 0.24 mile upstream of Old Canton Road.	*282	*283

Maps available for inspection at the Building Official's Office, Department of Planning and Development, 429 South West Street, Jackson Mississippi.

Send comments to The Honorable Kane Ditto, Mayor of the City of Jackson, Hinds, Rankin, and Madison Counties, P.O. Box 17, Jackson, Mississippi 39205.

Mississippi	Madison, city (Madison County).	Culley Creek	Approximately 370 feet upstream of Natchez Trace Parkway.	*295	*297
			At downstream side of Hoy Road	None	*336
		Stream S	Approximately 0.9 mile above confluence with Bear Creek.	None	*289
			Approximately 1.1 miles above confluence with Bear Creek.	None	*293
		Stream T	Approximately 1 mile above confluence with Bear Creek.	None	*301
			Approximately 1.2 miles above confluence with Bear Creek.	None	*305
		Heam Creek	Approximately 350 feet upstream of Natchez Trace Parkway.	None	*301
			Approximately 0.7 mile upstream of confluence of Heam Creek Tributary.	None	*326
		Heam Creek Tributary	At confluence with Heam Creek	None	*312
			At Hoy Road	None	*327
		Brashear Creek	Approximately 250 feet downstream of Old Cander Road.	*301	*303
			Approximately 250 feet downstream of Grawl Road.	*350	*352

Maps available for inspection at the Public Works Department, 525 Post Oak Road, Madison, Mississippi.

Send comments to the Honorable Mary Hawkins, Mayor of the City of Madison, Madison County, P.O. Box 40, Madison, Mississippi 39110.

Mississippi	Madison County (unincorporated areas).	Batchelor Creek Tributary 1.	Upstream side of Fores Road	None	*232
			Approximately 0.36 mile upstream of State Route 16.	None	*243
		Stream J	800 feet above confluence with Stream I .	*224	*245
			Approximately 500 feet upstream of Ragsdale Ray Road.	None	*266
		Stream Q	Approximately 500 upstream of confluence with Bear Creek.	*267	*268
			Approximately 1.5 miles upstream Gluckstadt Road.	None	*321
		Culley Creek	At confluence with Brashear Creek	*294	*297
			Approximately 370 feet upstream of Natchez Trace Parkway.	*295	*297
		Stream R	At confluence with Stream Q	None	*388
			Approximately 1.5 miles upstream of confluence with Stream Q.	None	*306
		Stream I	At confluence with Bear Creek	*236	*237
			Approximately 0.45 mile upstream of Interstate Route 55.	None	*274
		Stream O	At confluence with Bear Creek	*260	*264
			Approximately 1 mile upstream of Gluckstadt Road.	None	*295
		Stream N	At confluence with Bear Creek	None	*283
			Approximately 0.4 mile upstream of Church Road.	None	*283
		Stream S	At confluence with Bear Creek	*276	*278
			Approximately 1.1 miles above confluence with Bear Creek.	None	*293
		Heam Creek	Approximately 100 feet above Natchez Trace Parkway.	None	*300
			Approximately 500 feet above Natchez Trace Parkway.	None	*301

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Stream P	At confluence with Bear Creek	*257	*259
			Approximately 350 feet upstream of Clarksdale Road.	None	*296
		Stream T	At confluence with Bear Creek	*286	*284
			Approximately 1.2 miles upstream of confluence with Bear Creek.	None	*305
		Batchelor Creek Tributary 2.	Approximately 1,000 feet upstream Approximately Batchelor Creek.	*235	*234
			Approximately 0.7 mile upstream of confluence with Batchelor Creek.	None	*240
		Hearn Creek Tributary	At Hoy Road	None	*327
			Approximately 600 feet upstream Hoy Road.	None	*328
		Brashear Creek	Approximately 1,100 feet upstream of confluence of Culley Creek.	*294	*297
			Approximately 2.6 miles upstream of Interstate Route 55 (southbound).	None	*395
		Bear Creek	At Heindl Road	*208	*209
			Approximately 1.8 miles upstream of Bozeman Road.	None	*320
		Batchelor Creek	At confluence of Tilda Bogue	*205	*206
			Approximately 0.7 mile upstream of Miller Street.	*237	*234
		Hanging Moss Creek Tributary 4.	Approximately 200 feet downstream of New Road.	None	*354
			Approximately 1,100 feet downstream of Old Agency Road.	None	*366

Maps available for inspection at the Chancery Clerk's Office, Madison County Courthouse, Canton, Mississippi.

Send comments to Mr. David Richardson, President of the Madison County Board of Supervisors, P.O. Box 404, Canton, Mississippi 39046.

Mississippi	Ridgeland, city (Madison County).	Purple Creek Tributary 1	Approximately 0.15 mile above confluence with Purple Creek.	*313	*312
			At confluence with Purple Creek	*312	*308
		Purple Creek Tributary 6	At confluence with Purple Creek	*327	*326
			Approximately 0.2 mile above confluence with Purple Creek.	*327	*328
		Purple Creek Tributary 7	At confluence with Purple Creek	*328	*327
			Approximately 0.09 mile above confluence with Purple Creek.	*331	*330
		School Creek	Approximately 450 feet upstream of County Line Road.	*291	*292
			Approximately 550 feet upstream of Charity Church Road.	None	*322
		Beaver Creek	At confluence with Brashear Creek	*302	*303
			Approximately 1,600 feet upstream of Illinois Central Gulf Railroad.	None	*327
		Beaver Creek Tributary (formerly Brashear Creek).	At confluence with Beaver Creek	None	*317
			Approximately 0.11 mile above confluence with Beaver Creek.	*319	*318
		Brasher Creek	At County Line Road	*283	*287
			Approximately 0.7 mile upstream of confluence with with Beaver Creek.	*307	*306

Maps available for inspection at the Public Works Department, City Hall, Ridgeland, Mississippi.

Send comments to the Honorable Gene F. McGee, Mayor of the City of Ridgeland, Madison County, P.O. Box 217, Ridgeland, Mississippi 39158.

New York	Trenton (town), Oneida County.	Nine Mile Creek	At downstream corporate limits	None	*543
			Approximately 0.3 mile upstream of State Route 12 (southbound).	None	*786
		West Canada Creek	At downstream corporate limits	None	*712
			At Hinkley Dam	None	*1,202
		Cincinnati Creek	At confluence with West Canada	None	*721
			Approximately 2,375 feet of State Route 365.	None	*968
		Steuben Creek	At downstream corporate limits	None	*778

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream corporate limits	None	*794

Maps available for inspection at the Town Hall, Mappa Avenue, Barneville, New York.

Send comments to Mr. Mark Scheidelman, Supervisor of the Town of Trenton, Oneida County, RR 1, Box 431, Holland Patent, New York 13354.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Gastonia (city) Gaston County.	Duharts Creek	Downstream side of Beaty Road	*647	*649
			500 feet upstream of Oakdale Street	None	*746
		Duharts Creek Tributaries:			
		Tributary D–1	At the confluence with Duharts creek	*652	*655
			850 feet upstream of confluence with Duharts Creek.	*654	*655
		Tributary D–2	At the confluence with Duharts Creek	*664	*666
			510 feet upstream of confluence with Duharts Creek.	*665	*666
		Tributary D–3	At the confluence with Duharts Creek	*671	*673
			Upstream Extraterritorial Limits	*706	*707
		Tributary D–4	At the confluence with Duharts Creek	*672	*673
			100 feet upstream of confluence with Duharts Creek.	*672	*673
		Tributary D–6	Approximately 625 feet upstream of confluence with Duharts Creek.	*690	*689
			At Aberdeen Road	None	*708
		Tributary D–8	At the confluence with Duharts creek	*705	*711
			Approximately 625 feet upstream of Aberdeen Boulevard.	*733	*734
		Tributary D–9	At the confluence with Duharts Creek	*710	*717
			Approximately 0.5 mile upstream of Remount Road.	*746	*747

Maps available at City Engineer's Office, 181 S. South Street, Gastonia, North Carolina.

Send comments to the Honorable James B. Garland, Mayor of the City of Gastonia, Gaston County, P.O. Box 1748, Gastonia, North Carolina 28053–1748.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Hawley (borough) Wayne County.	Lackawaxen River	Approximately 1,200 feet downstream of Church Street Bridge.	*884	*883
			Approximately 1,830 feet upstream of U.S. Route 6 and State Route 590 Bridge.	*898	*895

Maps available for inspection at the Borough Office, Main Avenue, Hawley, Pennsylvania.

Send comments to the Honorable Ann Morgan, Mayor of the Borough of Hawley, Wayne County, 412 Academy Street, Hawley, Pennsylvania 18428.

State	City/town county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Virginia	Williamsburg (city) Independent City.	College Creek	Entire length within community	None	*8.5
		Paper Mill Creek	Entire length within community	None	*8.5
		Queen Creek	Entire length within community	None	*7.0

Maps available for inspection at the Planning Department, 401 Lafayette Street, Williamsburg, Virginia, and the Williamsburg Regional Library, Williamsburg, Virginia.

Send comments to the Honorable Trist McConnell, Mayor of the City of Williamsburg, 401 Lafayette Street, Williamsburg, Virginia 23185.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 13, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–11842 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 93–133; FCC 93–214]

General Exemption for Large Oceangoing Cargo Vessels and Small Passenger Vessels

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making (NPRM) that proposes to revise and update the requirements of the two general exemptions from the radiotelegraph equipment requirements of the Communications Act of 1934 (Communications Act) described in part 80 of the Commission's Rules for large oceangoing cargo vessels and small passenger vessels. This action is in response to several requests from the public to editorially and substantively modify the general exemptions.

Accordingly, this NPRM proposes to clarify, revise and update the general exemptions.

DATES: Comments must be submitted on or before July 6, 1993.

Reply Comments must be submitted on or before July 21, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632–7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice, FCC 93–214, adopted May 3, 1993; and released May 12, 1993. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 337–1433.

Summary of Notice

1. The Communications Act specifies that all passenger vessels and large oceangoing cargo vessels must carry a radiotelegraph (manual Morse code) station. In addition, the Communications Act provides the Commission with the authority to, among other things, exempt a ship or class of ships from the requirement to carry manual Morse code radiotelegraph equipment under certain conditions. The Commission's Rules currently contain "general exemptions" that cover, among other things, large oceangoing cargo vessels operating on domestic voyages along the coasts of the 48 contiguous states, not more than 150 nautical miles from the nearest land as well as small passenger vessels operating on certain domestic voyages.

2. Since the general exemption rules were adopted, several of their substantive provisions have become outdated or unnecessary because of advancements in technology or expanded routes of service. In addition, the Commission has received several inquiries seeking clarification of the terms of the large cargo vessel general exemption. As a result, we believe it is appropriate to propose changes to the existing general exemption for large cargo vessels and the general exemption for certain small passenger vessels.

3. First, we believe that the current geographical limitation on the applicability of the present general exemption to voyages along the coasts of the 48 contiguous states is unnecessarily restrictive. Therefore, we propose to broaden the general exemption to include domestic voyages through the Panama Canal Zone, to Alaska, to Puerto Rico, and along the coasts of the 48 contiguous states, not more than 150 nautical miles from the nearest land. Additionally, to reflect recent technological advances in emergency position-indicating radio beacons (EPIRBs), we are proposing to add a condition to the general exemption that vessels carry a satellite EPIRB.

4. Second, because the Commission recently determined that GMDSS offered significant advantages over the current marine manual Morse code radiotelegraph capabilities, we propose to add GMDSS equipment to the list of acceptable communications alternatives specified under the general exemption. This will update the exemption rules and allow GMDSS-equipped vessels to qualify for the general exemption without having to purchase unnecessary equipment. Further, we propose to make several editorial changes to this general exemption in the interest of greater clarity and simplicity.

5. In addition, the Notice proposes to broaden the applicability of the current general exemption contained in subpart S of part 80 of the Commission's Rules to include certain short international voyages, subject to the conditions of the current general exemption. In addition to this substantive change, we also propose a minor editorial clarification of the current general exemption for small passenger vessels operated on domestic voyages to specify the applicable sections of the Commission's Rules and to group it with similar exemptions.

6. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this NPRM. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines provided above. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

A. Reason for Action

(i). The Commission proposes to broaden, revise and update the current general exemptions for certain vessels operating on specific voyages in order to eliminate a substantial burden on the public, reduce administrative costs and to improve government efficiency.

B. Objectives

(ii). We seek to reexamine the requirements of the general exemptions for certain vessels in order to reduce unnecessary burdens on the industry and administrative costs to the Commission and thereby increase efficiency in the marine radio service and within the Commission.

C. Legal Basis

(iii). The proposed action is authorized under sections 4(i), 303(r), 352(b) (2) and (3) of the Communications Act, 47 U.S.C. 154(i), 303(r), 352(b) (2) and (3).

D. Reporting, Recordkeeping and Other Compliance Requirements

(iv). Ship owners and operators of several classes of vessels operating on certain voyages, subject to certain conditions, will no longer be required to apply for a specific exemption from the Commission.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

(v). None.

F. Description, Potential Impact, and Small Entities Involved

(vi). The proposals would broaden, revise and update the general exemptions for several classes of vessels, which would eliminate unnecessary regulatory burdens such as the requirement to apply for specific exemptions. Further, these proposals would significantly reduce the time and expense required by the Commission to process and evaluate applications of the various classes of vessels involved. Specifically, adopting the proposed changes to the small passenger general exemption should return approximately $40,000 to the economy and reduce approximately 1,300 burden hours on the Commission by eliminating the need for exemptions in certain circumstances. Because cargo vessels 1,600 gross tons and over are not typically owned by small businesses, only the changes to the general exemption for small passenger vessels are likely to concern small businesses.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

(vii). None.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or

decrease burden hours imposed on the public.

List of Subjects in 47 CFR Part 80

Marine safety, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–11789 Filed 5–18–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB98

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southwestern South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service, in cooperation with the U.S. Forest Service and the National Park Service, proposes to release black-footed ferrets (*Mustela nigripes*) into the Conata Basin/Badlands Reintroduction Area in southwestern South Dakota. This reintroduction is proposed to implement a primary recovery action for this federally listed endangered species and to evaluate release techniques. Provided conditions are acceptable, excess captive-raised black-footed ferrets will be released in 1993, and excess black-footed ferrets will be released annually thereafter for several years. Releases will utilize and refine reintroduction techniques used at other reintroduction areas and, if fully successful, will establish a wild population within about 5 years. The Conata Basin/Badlands population is proposed to be designated a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This population would be managed in accordance with the provisions of the accompanying special rule. The U.S. Fish and Wildlife Service solicits comments on this proposed designation and special rulemaking.

DATES: Comments from all interested parties must be received by July 19, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Mr. Stan Zschomler, State Supervisor, Ecological Services, 420 South Garfield Avenue, suite 400, Pierre, South Dakota 57501–5408. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Ecological Services Office in Pierre, South Dakota, (605) 224–8693, and at the U.S. Fish and Wildlife Service's Regional Office, Division of Endangered Species and Environmental Contaminants, 134 Union Boulevard, Lakewood, Colorado 80228, (303) 236–7398.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Searls in the South Dakota Office (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) will hold public hearings on this proposed rule in Rapid City and Pierre, South Dakota. The dates and specific locations for these hearings will be published in the **Federal Register** at least 15 days prior to the first hearing.

Background

1. Legislative

Among the significant changes made in the Endangered Species Act (Act) Amendments of 1982, Public Law No. 97–304, was the creation of a new section 10(j) that provides for the designation of specific populations of listed species as "experimental populations." Under previous authorities in the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Service was permitted to reintroduce populations into unoccupied portions of a listed species historical range when it would foster the conservation and recovery of the species. However, local opposition to reintroduction efforts, stemming from concerns about the restrictions and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), reintroduced populations established outside the current range but within the species historical range may be designated at the discretion of the Service as "experimental." This designation increases the Service's flexibility to manage reintroduced populations of endangered species because experimental populations may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species.

Additional management flexibility is possible if the experimental population is found to be "nonessential" to the continued existence of the species in question. Nonessential experimental populations located outside national wildlife refuge or National Park Service (NPS) lands are treated for purposes of section 7 of the Act as if they were only proposed for listing. Only two provisions of section 7 would apply outside of the national wildlife refuge and NPS lands: Section 7(a)(1), which requires all Federal Agencies to establish conservation programs; and section 7(a)(4), which requires Federal Agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Section 7(a)(2) of the Act, which requires Federal Agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply outside of national wildlife refuge and NPS lands. For experimental populations on national wildlife refuge and NPS lands, the designation would still be "nonessential," but section 7(a)(2) would apply because the population would be treated as threatened.

Note: Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal Agency.

Individual animals comprising the designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

2. Biological

The species addressed by this proposed rulemaking is the black-footed ferret (*Mustela nigripes*), an endangered carnivore with a black face mask, black legs, and a black-tipped tail. It is nearly 60 centimeters (2 feet) long and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret native to North America.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range, based on specimens collected since its identification, includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of the black-footed ferret from the Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although

there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) are established in Chihuahua (Anderson 1972) and were present as far back as the late Pleistocene-Holocene Age (Messing 1986). Because black-footed ferrets depend almost exclusively on prairie dogs for food and shelter (Henderson et al. 1969; Forrest et al. 1985) and black-footed ferret range is coincident with that of prairie dogs (Anderson et al. 1986), with no documentation of black-footed ferrets breeding outside of prairie dog colonies, black-footed ferrets may have been historically endemic to northern Mexico.

Black-footed ferrets prey on prairie dogs primarily and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dogs, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors, such as secondary poisoning from prairie dog toxicants or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population was discovered in South Dakota and studied intensively, but this population disappeared in the wild by 1974 with its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline in 1985–1986 due to canine distemper, which is fatal to infected black-footed ferrets. Eighteen survivors were taken into captivity in 1986–1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

3. Recovery Efforts

The national recovery objective in the recovery plan for this species (U.S. Fish and Wildlife Service 1988) is to ensure immediate survival of the black-footed ferret by:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991;

(2) Establishing a prebreeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations, with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encourage the widest possible distribution of reintroduced black-footed ferret populations.

When this objective is achieved, the black-footed ferret will be proposed for downlisting to threatened, assuming the extinction rate of the established populations remains at or below the rate new populations are established for at least 5 years.

Led by the Wyoming Game and Fish Department, cooperative efforts to breed and raise black-footed ferrets in captivity have been encouraging and successful. In 5 years, the captive population has increased from 18 to over 400 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. These subpopulations are located at the Wyoming Game and Fish Department's Sybille Facility in Wyoming, the Henry Doorly Zoo in Omaha, Nebraska, and the U.S. National Zoo's Conservation and Research Center in Front Royal, Virginia. Two additional captive subpopulations were established in 1990 (Louisville Zoological Garden in Louisville, Kentucky, and Cheyenne Mountain Zoo in Colorado Springs, Colorado). Two more captive subpopulations were established, one at the Phoenix Zoo in Phoenix, Arizona, and the other at the Toronto Zoo in Toronto, Canada, in 1991 and 1992, respectively, making a total of seven captive subpopulations.

Because a secure population of 200 breeding adults has been achieved, black-footed ferret recovery efforts are now moving into the next phase—reintroduction into the wild.

4. Reintroduction Sites

(a) Site Selection Process

The Service and State wildlife agencies in 11 Western States are identifying potential black-footed ferret reintroduction sites within its historical range. As of this writing, an introduction has occurred in Wyoming. Montana and South Dakota are developing potential reintroduction sites. Other Western States are still in the process of identifying and evaluating additional potential reintroduction sites. Sites are compared quantitatively and recommended for reintroduction scheduling by an interdisciplinary group assisting the Service known as the Black-Footed Ferret Interstate Coordinating Committee.

The Conata Basin/Badlands site was ranked as the third site to reintroduce black-footed ferrets.

(b) Conata Basin/Badlands Site

The Conata Basin/Badlands site was historically occupied by black-footed ferrets. The latest physical evidence that black-footed ferrets occupied southwestern South Dakota was in 1974. The Conata Basin/Badlands reintroduction sites encompass approximately 17,000 hectares (42,000 acres) of primarily Federal land. Mapping conducted in 1990 indicates that approximately 3,200 hectares (8,000 acres) of prairie dog towns exist at the Conata Basin/Badlands site. Using the method outlined in Biggins et al. (1991), this acreage has a present black-footed ferret family index of about 160.

As noted previously, the only known populations of black-footed ferrets are the reintroduced population in Shirley Basin, Wyoming, and the captive population. The Service has not concluded that the species is extirpated in the wild and requires black-footed ferret surveys to be performed if any action authorized, funded, or carried out by a Federal Agency may affect prairie dog colonies deemed capable of supporting black-footed ferrets. There have been over 500 black-footed ferret surveys involving more than 1,400 person-hours conducted in the Conata Basin/Badlands Reintroduction Area. These surveys have not turned up any evidence of black-footed ferrets. Based on these surveys, it is highly improbable that wild black-footed ferrets exist at the reintroduction site. To the best of the Service's knowledge, any reintroduced population of black-footed ferrets at the Conata Basin/Badlands site will be wholly separate and distinct from other populations of this species.

Reintroduction and black-footed ferret management will occur in a specifically delineated area designated the "Conata Basin/Badlands Reintroduction Area." Specifics on the location and boundaries of the Conata Basin/Badlands Reintroduction Area are provided in the map accompanying the special rule. Current plans are to begin releasing black-footed ferrets into a subportion of the Conata Basin/Badlands Reintroduction Area considered best for release and initial

management. If reintroduction is successful, black-footed ferrets eventually will disperse from the initial reintroduction area. Ferrets may be released into other portions of the Conata Basin/Badlands Reintroduction Area at a later date.

Black-footed ferrets will be released only if biological conditions are suitable and an acceptable management framework has been developed. Reintroduction in the Conata Basin/Badlands Reintroduction Area will be reevaluated if one or more of the following conditions specified in the draft "Cooperative Black-Footed Ferret Management Plan For The Conata Basin/Badlands Area In South Dakota" occur:

(1) Failure to maintain a black-footed ferret habitat rating index of at least 26 (i.e., carrying capacity for 40 adult black-footed ferrets) or a strong indication that such will be the case within 5 years.

(2) Failure to acquire "nonessential experimental population" designation for the site.

(3) A wild black-footed ferret population is discovered within the experimental population area.

(4) A significant number of cases of canine distemper or other diseases determined to be detrimental to black-footed ferrets is documented in any wild mammal in or near the reintroduction area within 6 months of the scheduled reintroduction.

5. Reintroduction Protocol

In general, the reintroduction protocol will involve releasing 20 or more captive-raised black-footed ferrets in the first year of reintroduction, and 50 or more captive-raised black-footed ferrets annually thereafter for 2–4 years. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive-breeding population; hence, any loss of released animals is unlikely to have appreciable impacts on existing genetic diversity in the species. Moreover, because breeding black-footed ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced. Once the experimental population becomes established, it may be necessary to release ferrets from other established, reintroduced populations to enhance the genetic diversity of the population.

Initial reintroduction in the Conata Basin/Badlands complex will be used to test and evaluate various release techniques. Present protocol on black-footed ferret releases considers three types: Soft, hard, and preconditioned-hard.

The soft release technique is similar to that used in the initial releases in Wyoming. Release cages are situated at the release site, and black-footed ferrets are maintained in the cages for a few days to acclimate to the surroundings. After a few days, a tunnel (tube) to the ground is opened to allow the ferrets free egress and ingress. Food is supplied even after departure in case the ferrets need to return to a known food supply. Experience with the Wyoming reintroduction in Shirley Basin indicates that once black-footed ferrets were free to leave their cages, there were few returns. In the initial releases cages were above ground, but 1992 releases tested some cages with below-ground chambers.

The preconditioned-hard release refers to releasing black-footed ferrets that have had some acclimation to the wild where they were raised. This technique uses black-footed ferrets whose parents were released into enclosed prairie dog towns and allowed to mate and rear offspring. These offspring, raised in an environment where they had to kill their own food, are released directly into the wild.

The hard release refers to animals from the present captive-reared method being released directly into the wild without an acclimation period or a release cage.

Because of the wilderness designation on the Badlands National Park prohibiting motor vehicles, this area may lend itself to an evaluation of the hard and preconditioned-hard release techniques because the use of cages in this area would present logistical problems.

Black-footed ferrets will be released sequentially over a period of 3–8 weeks, because all animals will not reach the proper age for release at once, and because it will be impossible to intensively monitor all radio-tagged animals if they are released simultaneously. All black-footed ferrets in the experimental reintroduction will be young-of-the-year. Most releases will occur in September and October, when the black-footed ferrets are about 18 weeks of age. Once independent of artificial support, all black-footed ferrets will be managed in a similar manner.

Released animals will be vaccinated against diseases, as appropriate, including canine distemper, if an effective vaccine can be developed for black-footed ferret use. In areas other than within the Badlands National Park, preventative and, where necessary, corrective measures to reduce predation by coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators will be taken over the short term without intent to continue over the long term. Habitat conditions will be monitored continually during the reintroduction effort.

All black-footed ferrets released will be marked. A sample of the released black-footed ferrets may be radio-tagged, and their behavior monitored.

Realistically, the Service expects high natural mortality (up to 90 percent) among the released black-footed ferrets in the first year of release. Despite prerelease conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest within the first month of release. A realistic goal for the first year would be to work toward enabling a few black-footed ferrets to survive at least 1 month after release with perhaps 10 percent of the released animals surviving the winter.

The intensive studies conducted on the wild Meeteetse population during the 1982–1986 period will provide a natural baseline against which the reintroduction effort can be compared to determine how well the reintroduction experiments are proceeding. These baseline data will be supplemented with baseline biological and behavioral data taken from the South Dakota population in the 1960's and 1970's.

If successful, this effort is expected to result in the establishment of a free-ranging population of at least 40 black-footed ferret adults within the Conata Basin/Badlands Reintroduction Area by a target date of 1997 or 1998. The Service will evaluate project progress annually, including sources of mortality. The biological status of the population at this site will be reevaluated within the first 5 years to determine future management needs. This 5-year evaluation will not include an evaluation to determine whether the nonessential experimental designation for the Conata Basin/Badlands population should be changed. It is envisioned that the nonessential experimental designation for this population will not be changed unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered and the species delisted. Once recovery goals for delisting are met, a rule will be prepared to propose delisting.

Status of Reintroduced Population

The Conata Basin/Badlands population of black-footed ferrets is proposed to be designated a nonessential experimental population according to the provisions of section

10(j) of the Act. The basis for this designation is explained below. The term "experimental population" will be discussed first, followed by an explanation of why this experimental population qualifies as "nonessential."

"Experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species if more management flexibility is needed to make reintroduction compatible with current or planned human activities in the reintroduction area. Per section 4(d) of the Act, these special regulations must be "necessary and advisable" to provide for the conservation of the black-footed ferret. Experimental populations can be determined "essential" or "nonessential."

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of section 7(a)(2) of the Act, they are treated as though they were only proposed for listing, except on a national wildlife refuge or NPS land, where they are treated as if they were listed as threatened. This experimental population qualifies as being nonessential to the continued existence of the black-footed ferret because:

1. For the time being, the captive population will be the primary species population. This population has been protected against the threat of extinction from a single catastrophic event through the splitting of the captive population into seven widely separated subpopulations. Hence, loss of the experimental population will not threaten the species survival.

2. For the time being, the primary repository of genetic diversity for the species will be the 200 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

3. All animals lost during the reintroduction attempt can be replaced readily through captive breeding, as demonstrated by the rapid increase in the captive population over the past 4 years. Based on current population dynamics, 100 to 200 juvenile black-footed ferrets will eventually be produced each year in excess of numbers needed to maintain 200 breeding adults in captivity.

The Service intends for this to be the third experimental population of black-footed ferrets, the first being the ongoing effort in Wyoming and the second proposed for north-central Montana. It is important that these populations be developed to help stabilize the species. Prolonged captivity increases the risk of losing important wild survival instincts and reduces the likelihood of successful reintroduction and recovery of the species. Furthermore, the continued breeding success of the captive population will create problems in finding and funding adequate housing for captive black-footed ferrets unless some animals are used for reintroduction efforts.

Virtually all of the habitat in the Conata Basin/Badlands Reintroduction Area is federally owned. The nonessential experimental population designation will facilitate reestablishment of the species in the wild by easing adjacent landowner concerns about possible overly restrictive protective measures that might be taken. This designation will relax the restrictiveness of the regulations that protect each individual of a reintroduced population of endangered species while promoting the conservation of the reintroduced population as a whole. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets, such that private landowners may continue their current lifestyles and maintain income.

As successful wild populations are established, they will provide wild-raised black-footed ferrets that can be used to supplement captive releases at other sites. As additional wild populations become established, the captive population will diminish in relative importance, and wild populations will increase in relative importance in the overall species recovery effort.

The Service believes that at least 10 or more wild populations are needed to ensure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse black-footed ferret population was captured for inclusion in the captive population in 1987, no other black-footed ferrets have been confirmed anywhere in the wild. There is a remote chance that black-footed ferrets may still exist in the wild. Survey work for black-footed ferrets in the proposed experimental population area has been extensive because of the interspersion of Federal and tribal lands. Since 1982, the U.S. Forest Service (USFS) has conducted over 760 surveys for black-footed ferrets on more than 20,200 hectares (50,000 acres) of prairie dog colonies in the experimental population area. This included prairie dog complexes on both Federal and neighboring private lands when the complex covered both landownerships.

The NPS has conducted 24 black-footed ferret surveys on over 800 hectares (2,000 acres) of prairie dog colonies since 1988. During the period 1985–1989, the Pine Ridge Indian Reservation undertook a $6.2 million prairie dog control program and treated over 121,000 hectares (300,000 acres) of prairie dogs on the reservation. All treated acres were surveyed prior to treatment and part of this acreage lies within the experimental population area.

In addition to the actual black-footed ferret surveys, a number of man-hours have been spent on prairie dog colonies in the experimental population area conducting a variety of research and land-management practices. No black-footed ferrets or black-footed ferret signs were observed during these activities. Based on these data, the Service does not believe that the reintroduced population will overlap with any wild population of the species.

Conata Basin/Badlands Population

The Conata Basin/Badlands Reintroduction Area lies on USFS and NPS land in three irregularly shaped areas. The Conata Basin/Badlands Reintroduction Area lies entirely in eastern Pennington County. The experimental population area extends southward into Shannon County and eastward into Jackson County.

The Conata Basin/Badlands experimental population area is that area bounded on the north by Interstate Highway 90 (I–90) beginning where it crosses the Cheyenne River; then east following I–90 to State Highway 73; then south along Highway 73 to Highway 44; then west along Highway 44 to where it meets Bureau of Indian Affairs (BIA) Highway 2 and continues west along BIA Highway 2 to BIA Highway 41; then north along BIA Highway 41 to the Cheyenne River; and then northeast along the Cheyenne River to the point of origin at I–90. While none of these features absolutely preclude black-footed ferret movement,

their deterrent, coupled with the distance from the reintroduction site, makes it highly unlikely that a black-footed ferret would migrate outside the experimental population area. Sufficient black-footed ferret surveys have been conducted in the experimental area over the last 10 years to indicate that no wild black-footed ferret population exists in the area.

A final administrative determination regarding the presence or absence of wild black-footed ferrets in this area will be made by the Service when the final rulemaking is published in the **Federal Register**.

The Conata Basin/Badlands Reintroduction Area will serve as the core recovery area. Prior to the first breeding season following the first releases, all marked black-footed ferrets in the wild in the experimental population area will comprise the nonessential experimental population. During and after the first breeding season, all black-footed ferrets in the wild located east of the Cheyenne River and BIA Highway 41, south of I–90, west of State Highway 73, and north of State Highway 44 and BIA Highway 2 in Pennington, Shannon, and Jackson Counties, South Dakota, will comprise the nonessential experimental population. Reintroduced black-footed ferrets are expected to remain in the Conata Basin/Badlands Reintroduction Area because of the prime prairie dog populations and the limited home range of black-footed ferrets. In the unlikely event that a black-footed ferret leaves the Conata Basin/Badlands Reintroduction Area but stays within the boundaries of the experimental population area, the Service will have the authority to capture the emigrant and place it back into the reintroduction area, translocate it to another reintroduction site, or place it in captivity. However, as a general rule, black-footed ferrets on Federal lands in the experimental zone will not be removed. If a black-footed ferret is found on private land outside the reintroduction area but within the experimental population area, the landowner will be consulted and the black-footed ferret removed if the landowner requests removal.

All black-footed ferrets released in the reintroduction area will be marked. In the unlikely event that unmarked black-footed ferrets are found in the experimental population area before the first breeding season following the first fall release, a concerted effort will be initiated to determine the location of the source population. This search will ascertain whether a wild population exists and determine the need for appropriate cooperative conservation actions.

A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. If an animal is genetically determined to be from the experimental population, it may be returned to the Conata Basin/Badlands Reintroduction Area, held in captivity, or released at another reintroduction site.

If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

Management

The Conata Basin/Badlands reintroduction will be undertaken by the Service, the USFS, and the NPS in accordance with "A Cooperative Management Plan For Black-Footed Ferrets—Conata Basin/Badlands, South Dakota." General reintroduction protocol was discussed under "Background." Additional considerations pertinent to reintroduction are discussed here.

1. Monitoring

Various monitoring efforts are planned over the first 5 years. Prairie dog numbers and distribution will be monitored annually. Monitoring for sylvatic plague will be conducted. There will be monitoring for canine distemper prior to and during reintroduction. Reintroduced black-footed ferrets and their offspring will be monitored every year using spotlight surveys and/or snow tracking surveys done on foot. Some black-footed ferrets may be radio collared, and all will be marked. Assuming some ferrets survive the winter and enter the courtship and breeding season the next year, monitoring of breeding success and recruitment will take priority. Black-footed ferret behavior will be monitored throughout the duration of the effort.

The Service will request that the USFS's and the NPS's reintroduction area supervisor/manager assign a primary black-footed ferret program contact for agencies, private landowners, and public users in the affected area and follow up reports of injured or killed black-footed ferrets and immediately notify the State Supervisor, Ecological Services, Pierre, South Dakota, (605) 224–8693. The State Supervisor will notify the Service's Law Enforcement Division. Discussions and actions to follow up these notifications and collection and determination of the disposition of any live or dead specimens will follow as soon as possible.

The Service will ensure that the black-footed ferret population and its habitat are monitored annually by cooperating agencies, and any potential of ongoing activities or circumstances, which may present unanticipated hazards to black-footed ferrets, be documented. When appropriate, strategies and contingencies to minimize unnecessary harm to black-footed ferrets should be cooperatively added to the reintroduction and management plan and implemented by the Service and its cooperators.

The Service will assist in ensuring that the agencies and public are reasonably informed about the presence of black-footed ferrets in the affected area via public information, education programs, and media. This information program will address the precautions and care that should be taken in handling sick and injured black-footed ferrets. This will enhance effective treatment and care in handling specimens and, when dead black-footed ferrets are located, will ensure proper preservation of black-footed ferret remains. The finder or investigator will be requested to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

The Service will require that persons locating dead, injured, or sick black-footed ferrets or causing harm or mortality to a black-footed ferret immediately notify the State Supervisor, Fish and Wildlife Service, Ecological Services, Pierre, South Dakota.

2. Disease Considerations

Reintroduction will be reevaluated if a significant number of cases of canine distemper are documented in any wild mammal within 6 months prior to the scheduled reintroduction. Samples from coyotes and badgers will be obtained prior to reintroduction to determine if canine distemper exists in the reintroduction area. Visitors and biologists in the reintroduction area will be discouraged from bringing dogs. Residents and hunters will be encouraged to report sick wildlife. Efforts are continuing to develop an effective canine distemper vaccine for black-footed ferrets.

Although there is no history of sylvatic plague, sampling for sylvatic plague will occur on a regular basis

prior to and during the reintroduction effort.

3. Genetic Considerations

While the ultimate genetic goal of the reintroduction program should be to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population, individuals used for reintroduction will be chosen so that the level of genetic diversity and demographic stability (e.g., stable age and sex structure) of the captive population is not compromised (reduced) by their removal. Therefore, early experimental reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and reestablishing breeding black-footed ferrets that theoretically compensate for any genetic biases in earlier releases.

4. Prairie Dog Management

Prairie dog management in the reintroduction area will be in accordance with the USFS's Prairie Dog Management Plan on USFS land and according to the NPS's Resource Management Plan on NPS land. Prairie dog management on private land is at the discretion of the landowners.

5. Mortality

Only animals considered excess to the needs of the captive-breeding goal will be used in this reintroduction attempt. Though efforts will be made to reduce mortality, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced though predator and prairie dog management, vaccination, supplemental feeding, and prerelease conditioning. Human-caused mortality will be reduced through information and education efforts.

A low level of mortality from incidental take is expected as a result of designing the black-footed ferret reintroduction program to work within the context of traditional land uses in the reintroduction area. Incidental take is any take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the experimental population area.

Black-footed ferret injuries or mortalities will be required to be reported immediately to the Service. The Service will investigate each case of injury or mortality. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, then the Service will not seek legal action. Knowing take will be referred to the appropriate authorities for prosecution.

The draft biological opinion prepared on the reintroduction proposal anticipates an incidental take level of 12 percent per year. If this level of incidental take is reached at any time within any year, the Service, in cooperation with USFS and NPS, will conduct an evaluation of incidental take and cooperatively develop and implement with landowners and land users measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not threaten the continued existence of the species. As noted earlier, the captive population is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the reintroduced population as a *nonessential* experimental population. The choice for wildlife managers is either to risk excess captive black-footed ferrets in reintroduction efforts in order to reestablish the species in the wild or to keep all black-footed ferrets in relative safety in captivity and forego reestablishing the species in the wild.

6. Special Handling

Under the proposed special regulation promulgated under authority of section 4(d) of the Act that will accompany the experimental population designation, Service employees and agents would be authorized to handle black-footed ferrets for scientific purposes; relocate black-footed ferrets to avoid conflict with human activities; relocate black-footed ferrets within the experimental population area to improve black-footed ferret survival and recovery prospects; relocate black-footed ferrets to future reintroduction sites; aid animals that are sick, injured, or orphaned; and salvage and dispose of dead black-footed ferrets. If a black-footed ferret is deemed to be unfit to remain in the wild, it would be placed in captivity. The Service would determine the disposition of sick, injured, orphaned, or dead black-footed ferrets.

7. Coordination With Landowners and Land-Management Agencies

The proposed action was discussed with potentially affected State and Federal agencies in the proposed reintroduction area. An effort to identify issues and concerns associated with reintroduction into the Conata Basin/Badlands area was conducted through a Coordinated Resource Management process. A Local Level Committee was selected consisting of Federal Agencies, State agencies, environmental interests, grazing and land-use interests, and the local landowners to discuss concerns with black-footed ferret reintroduction over a period of 16 months.

The Local Level Committee did not reach a consensus on a plan for ferret restoration. However, the issues raised during the six Local Level Committee meetings provided valuable input to the responsible Federal agencies for developing the draft Environmental Impact Statement. The Local Level Committee members provided their individual comments to the Governor of South Dakota who indicated in letters to the Secretaries of Agriculture and Interior his willingness to support a black-footed ferret restoration program provided property rights of private individuals could be protected.

8. Potential for Conflict With Grazing and Recreational Activities

USFS lands in the Conata Basin/Badlands Reintroduction Area are included in grazing allotments. Conflicts between grazing and black-footed ferret management are not anticipated on USFS lands, as current USFS prairie dog management plans have assigned reduced Animal Unit Months to areas that are designated leave areas for prairie dogs. No additional grazing restrictions will be placed on USFS lands with grazing allotments in the Conata Basin/Badlands Reintroduction Area as a result of black-footed ferret reintroduction. No commercial grazing occurs on NPS land.

No additional restrictions will be placed on landowners regarding prairie dog control on private lands in the experimental population area.

Recreational activities currently enjoyed in the Conata Basin/Badlands Reintroduction Area (antelope hunting, prairie dog shooting, rabbit hunting using greyhound dogs, trapping for furbearers or predators, and off-road vehicle recreation) are either unlikely to impact black-footed ferrets or would be managed to avoid or minimize negative impacts to black-footed ferrets.

9. Protection of Black-Footed Ferrets

Recently released black-footed ferrets will need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through prerelease conditioning, vaccination, predator control, positive management

of prairie dog populations, etc. Human-caused mortality will be minimized by placing black-footed ferrets in an area with low human population density and by working with and educating landowners, Federal land managers, and recreationists to develop means for conducting their existing and planned activities in a manner that is compatible with black-footed ferret recovery and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to black-footed ferrets.

A draft biological opinion was prepared on this action to reintroduce black-footed ferrets into the experimental population area and concluded that this action is not likely to jeopardize listed species. A final biological opinion will be prepared on the final rulemaking.

10. Public Awareness and Cooperation

An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction.

11. Overall

The designation of the Conata Basin/Badlands population as a nonessential experimental population will encourage local cooperation as a result of the management flexibility allowed under this designation. The Service considers the nonessential experimental population designation and the Conata Basin/Badlands management plan necessary to receive cooperation of adjacent landowners, agencies, citizens, grazing interests, and recreational interests in the area.

Public Comments Solicited

In February 1992, public meetings were held in Wall, South Dakota, and in Sioux Falls, South Dakota, to get public input into a proposal to reintroduce black-footed ferrets into the Conata Basin/Badlands area as a nonessential experimental population. The Service intends that any action resulting from this proposed rulemaking to designate the Conata Basin/Badlands population as a nonessential experimental population be as effective as possible. Therefore, public meetings will be held following publication of this proposed rule. Comments or recommendations concerning any aspect of this proposed rule are hereby invited to be submitted at these meetings or in writing (see ADDRESSES section) from State, public, and government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. Final promulgation of a rule to implement this proposed action will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, has been prepared and is available from the Service offices identified in the ADDRESSES section.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Service has determined that this is not a major rule as determined by Executive Order 12291 and that it would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The rule, as proposed, does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

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Authors

The principal authors of this rule are Douglas Searls (see FOR FURTHER INFORMATION CONTACT section) and Stephen C. Torbit, Lakewood, Colorado (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed that § 17.11.(h) be amended by revising the existing two entries for the "Ferret, black-footed" under "MAMMALS" to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
MAMMALS							
*	*	*	*	*		*	*
Ferret, black-footed ...	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1, 3, 443, __.	NA	NA
Do	.....do	.....do	U.S.A. (specific portions of WY and SD—see § 17.84(g)(9)).	XN	433, __ .	NA	17.84(g)
*	*	*	*	*		*	*

3. It is proposed that 50 CFR 17.84 be amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraph (g)(9)(i) and (g)(9)(ii) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g) (3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population area if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the reintroduction area when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen that may be useful for scientific study.

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of the carrying out of an otherwise lawful activity. Knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4)(vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service State Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the State Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the State Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (g)(2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map of Wyoming and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see map of Wyoming). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population, thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and Bureau of Indian Affairs (BIA) Highway 2, east of the Cheyenne River and BIA Highway 41, south of Interstate 90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the reintroduction area. A black-footed ferret occurring outside the experimental area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the

experimental population, it may be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or appropriate State wildlife agency, or their agents, and given appropriate care. Such an animal shall be released back to the appropriate reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of each experimental population will be reevaluated within the first 5 years after the first year of releases of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released on the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described area. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

(12) This 5-year evaluation will not include a reevaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation that would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on his lands will be permitted to terminate his consent, and the ferrets will be at his request relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

4. It is proposed to amend § 17.84 by adding a map to follow the existing map at the end of paragraph (g).

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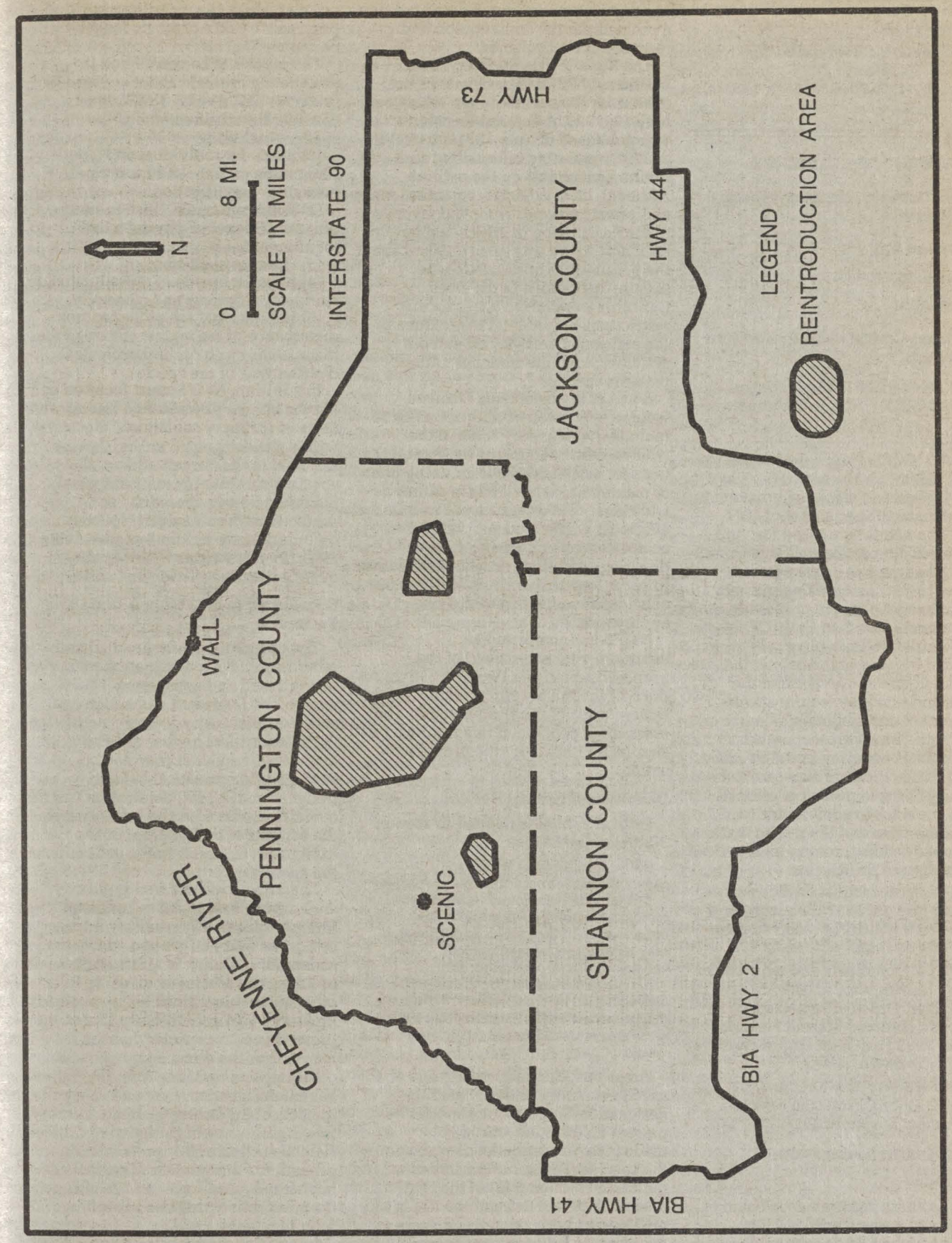

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Dated: April 8, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93-11790 Filed 5-18-93; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930363-3063]

RIN 0648-AF06

Designated Critical Habitat; Northern Right Whale

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to designate critical habitat for the northern right whale (*Eubalaena glacialis*) pursuant to the Endangered Species Act of 1973 (ESA). The habitat proposed for designation are portions of Cape Cod Bay, Stellwagen Bank and waters adjacent to the coasts of Georgia and Florida. In addition, the proposed designation is based on the consideration of those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The direct economic and other impacts resulting from this critical habitat designation are expected to be minimal. The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

DATES: Comments must be received on or before July 19, 1993. Requests for a public hearing must be received on or before July 6, 1993.

ADDRESSES: Comments and requests for a public hearing should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, 301/713-2322.

SUPPLEMENTARY INFORMATION:

Background

The northern right whale is listed as endangered under the ESA. The objective of the ESA is to provide protection for ecosystems upon which endangered species depend and provide a program for the conservation and recovery of such species.

The Right Whale Recovery Team petitioned NMFS to designate critical habitat for the northern right whale on May 18, 1990. A **Federal Register** notice was published on July 12, 1990 (55 FR 28670), requesting information and inviting comments on the petition. Although most agencies, organizations, and private groups responded favorably to the designation of critical habitat for each area, there was some concern about the possibilities of restrictions to existing operations in the areas. Concerns were raised about fishing restrictions or potential restrictions in the petitioned areas for oil and gas activities, and international traffic patterns changes.

Some of the comments received favored expansion of critical habitat to include the migratory route of the whales. Other comments focuses on the need for establishing a monitoring plan or making funds available to gather additional data on such areas as humans effects on whale food supply, and acoustic effects on whales from dredging operations or related activities. Information received by NMFS has been considered and incorporated as appropriate.

NMFS has completed an environmental assessment of the proposed action and two alternatives for the designation of critical habitat off the eastern coast of the United States. The assessment concluded in a finding of no significant impact for the proposed action.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as

> (i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.

Areas outside the current range of a species can only be designated if a designation limited to the species' present distribution would be inadequate to ensure the conservation of the species. The term "conservation", as defined in section 3 (3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

The criteria to be considered in designating critical habitat are specified under 50 CFR 424.12. NMFS must consider the requirements of the species, including:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and, generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

In addition, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, calving areas, food resources, water quality or quantity, and vegetation and soil types.

Consideration of Economic and Other Factors

The economic, environmental and other impacts of a designation must also be evaluated and considered. NMFS must identify present and anticipated activities that may adversely modify the proposed critical habitat or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to the species' habitat, in many cases the direct economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat only duplicates and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the taking

prohibitions under section 9 and associated regulations. "Taking" as defined in the ESA includes harm to a listed species. Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding or sheltering.

Impacts attributable to listing also include those resulting from the responsibility of all Federal agencies under section 7 to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat, regardless of whether or not that habitat has been designated as critical.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. A critical habitat designation contributes to species conservation primarily by identifying critically imported areas and by describing the features within the areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only direct impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). However, if no critical habitat has been designated, Federal agencies still must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat also are likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation usually only duplicates the protection provided under the section 7 jeopardy provision. Nevertheless, designation of critical habitat may provide additional benefits to a species in cases where areas outside of the species' current range have been designated. In these cases, it is expected that Federal agencies would consult on additional actions occurring in these areas.

A designation of critical habitat provides a clearer indication to Federal agencies as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area). For example, disposal of waste material in water adjacent to a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation would also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. This is particularly true in cases where there are alternative areas that would provide for the conservation of the species. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of proposal, and, therefore, are not considered in the critical habitat designation process. Other Federal, state and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposal for critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features identified. If there are alternative areas that would provide for the conservation of the species, these alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features is evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within 1 year of the proposal. Final critical habitat designations may be revised, using the same process, as new data become available.

A description of the essential habitat, need for special management, and impacts of designating as critical habitat, as well as the proposed action, are described in the following sections for the northern right whale.

Essential Habitat of the Northern Right Whale

The overall spatial requirements for right whales are not known. Northern right whales are observed from Florida to Nova Scotia within the span of a year, and may require different habitats throughout the seasons of the year. The movement of the whales between different areas may be driven by such factors as prey availability, reproductive needs, and metabolic constraints, or any other variable(s). The distribution pattern observed for northern right whales indicates that they occupy at least five principle habitats, in the North Atlantic: Southeastern U.S. coast, the Great South Channel, Cape Cod Bay, the Bay of Fundy, and the Scotian Shelf. These high use areas may comprise the minimal space required for normal behavior that will support a viable northern right whale population.

The known primary prey of the northern right whale is the copepod, *Calanus finmarchicus* (Kraus and Kenney 1991) although other similar sized zooplankton or other prey organisms may be utilized. In order to receive sufficient sustenance and maintain their energy requirements, northern right whales must feed on

dense patches of these copepods or other organisms. Such dense patches of zooplankton are not known to be common in the open ocean, but have been observed seasonally in the Great South Channel and Cape Cod Bay. It is speculated that the topographic and seasonal oceanographic characteristics of these two areas are conducive to the dense growth of zooplankton. Based on observed distribution patterns, sufficient quantities of prey are likely to be available for the northern right whale in the waters of the Bay of Fundy and the Scotian Shelf. Feeding has been observed in all four areas at what appears to be depths ranging from the surface to the bottom. Because feeding has not been observed along the southeastern U.S. coast, it is believed that these whales using this area may fast or feed rarely during the winter.

Although little information is available on right whale physiology, it is hypothesized that the metabolic rate of the whale is affected by water temperature (Kraus and Kenney 1991). Northern right whales observed along the southeastern coast occur in a band of relatively cool water (10–13 °C). By giving birth in this water, the temperature may be both low enough to cool the cow, yet warm enough not to cause problems for a newborn calf. Once a calf has achieved a larger body mass and associated blubber layer through nursing, it is better able to accommodate the same cold waters as an adult.

The observed preferences of cow/calf pairs to the Bay of Fundy, Cape Cod Bay, and the southeastern U.S. coastal areas may be due to the geology and topography that affords protection from large waves and rough water. The land masses associated with the Bay of Fundy and Cape Cod Bay interrupt strong winds and offshore wave activity is minimized on the southeast coast by a relatively shallow, very long underwater shelf (extending almost 65 miles (105 km) offshore).

Courtship activities have been observed throughout most of the range of the northern right whale, except the southeast coast (Kraus 1985). Courtship activities appear to occur principally in groups at the surface, during which northern right whales are relatively oblivious to other activities on the surface, such as boat traffic (Kraus 1985). Thus, the apparent habitat requirement for mating would be open, unobstructed surface waters, but this activity does not appear to be limited by location or time of year.

Special Management Considerations or Protection

Human activities in northern right whale habitat areas may have impacts on the habitat. These activities include: Vessel activity, fishing, pollution, mining, and oil and gas exploration. The effect of any of these activities either directly to individual whales or on the habitat could have consequences that may restrict the recovery of the northern right whale population. Therefore, special management considerations may be required in order to protect and promote the recovery of the northern right whale. Because the northern right whale is a migratory species, management of certain activities in a habitat area might only be required seasonally.

Discharges from municipal, industrial, and non-point sources, vessel activity, dredging activities, dredge spoil disposal and other sources may degrade essential habitat, which could have deleterious effects on the northern right whale population. Plankton is at the base of most marine food chains, and as such is often indicative of the health of the marine ecosystem. Pollutants may affect phytoplankton and zooplankton populations in a way that decreases the density and abundance of specific zooplankton patches on which northern right whales feed. In addition, pollution may affect the feeding patterns and habitat use of other components of the marine ecosystem which in turn could impact food and habitat availability for the northern right whale. Pollutants may also have direct toxic effects on the whale. Monitoring of known and potential pollution sources in nearshore critical habitats may be necessary to insure that these sources are not decreasing the northern right whale's ability to gain maximum benefit from use of the area.

Varying degrees of vessel activity occur in all known essential habitats. These activities include recreational and commercial fishing vessels, commercial transport vessels, passenger vessels, recreational boats, whalewatching boats, research vessels, and military vessels (e.g., surface ships, submarines, helicopters, and low-altitude aircraft). Vessel activities can change whale behavior, disrupt feeding practices, disturb courtship rituals, break up food sources, and harm or even kill whales through collisions. On January 5, 1993, a U.S. Coast Guard cutter struck and killed a Northern right whale calf approximately 10 miles (16 km) north of St. Augustine, Florida. When northern right whales are engaged in courtship or surface feeding activities, they appear to be oblivious to vessels and may be at higher risk of collisions at these times (NMFS 1991). Calves and single northern right whales, on the other hand, have been observed to exhibit avoidance behavior in response to the sound of vessels (NMFS 1991). Turbulence associated with vessel traffic may also indirectly affect northern right whales by breaking up the dense surface zooplankton patches in certain whale feeding areas. Special vessel traffic management considerations may be necessary in certain areas when northern right whales are present.

Although vessel traffic may impact individual northern right whales and their habitat, they have not been observed to abandon an area due to vessel activity. Historical records indicate that northern right whales annually returned to the same area, despite intense harassment such as whaling activities. Whalewatching and research vessels presently follow distance and time restrictions with respect to their proximity to northern right whales. Shipping lanes may require temporary relocation or certain restrictions while northern right whales are present in critical habitat areas.

Nevertheless, northern right whales are no longer observed in certain areas where they once were common, such as Delaware Bay, New York Bight, and Long Island Sound (NMFS 1991). The absence of whale sightings in these areas may be due to one or a combination of several factors, such as: Exclusion by human activities, habitat degradation, insufficient quantities of prey due to habitat or natural alterations in the physical environment, extinction of an independent breeding group that used these areas, contraction of the species' range as the population has decreased, or simply a lack of adequate observer effort in these areas (NMFS 1991).

Observation records show that northern right whales have become entrapped and entangled in fishing gear, resulting in scars, injuries, and death. Fishing nets and associated ropes are known to become entangled at three locations on the whale: Around a flipper, at the gape of the mouth, and around the tail (Kraus 1985). Gill nets are believed to be the primary cause of fishing gear-related scars and injuries, although whales have also become entangled in drift nets and lines from lobster pots, seines, and fish weirs (Kraus 1985). Fishing practices and locations may require special management considerations when the timing of the fishing season and the

presence of the northern right whale overlap.

Exploration and development for oil, gas, phosphates, sand, gravel, and other materials on the outer continental shelf may impact northern right whale habitat through the discharge of pollutants (such as oil, drilling muds, and suspended solids); noise from seismic testing, drilling, and support activity; and disturbance of the environment through vessel traffic and mining rig activity. If these types of activities are proposed their timing and location may also require special management considerations including the establishment and maintenance of buffer zones.

Activities That May Affect the Essential Habitat

Uses of the proposed areas overseen by Federal agencies may be in need of special management considerations, or protection, to ensure survival of northern right whales. Federal agencies affected by critical habitat designation of these areas include the U.S. Coast Guard, Environmental Protection Agency, U.S. Army Corps of Engineers, NMFS (including the New England Fishery Management Council and South Atlantic Fishery Management Council), National Ocean Service, Office of Coastal Zone Management, Minerals Management Service, and the U.S. Navy. These agencies would continue to be required to ensure that any activities authorized, funded, or otherwise conducted in the area do not significantly modify or negatively affect critical habitat.

Resource use in the proposed areas are currently, and have been historically, dominated by vessel traffic and fisheries. These activities account for the majority of human resource use associated with the proposed critical habitat areas. The potential impacts of these activities on the proposed critical habitat areas are discussed below.

In Cape Cod Bay, vessel traffic associated with the Cape Cod Canal, the Boston Harbor traffic lanes, dredging and disposal traffic, recreational boating, commercial fishing and whale watching comprise the majority of the vessel activity in the immediate area. Of these activities, recreational boating, commercial fishing, and whale watching contribute greatly to the level of activity in the proposed critical habitat area. Recreational boating begins with the onset of warmer months, particularly in June. Commercial fishing vessels and gear are dominated by the lobster industry, which does not typically begin its season prior to the middle of June. Whalewatching boats, ferries, or other vessels increase activity in the area in relationship to the onset of warmer weather and the tourist season and typically begin in May or June and end no later than October or November. There is no evidence to suggest these activities currently result in appreciable degradation to northern right whale habitat.

In the Great South Channel, vessel traffic and fisheries are the activities most representative of resource use within the proposed critical habitat area. However, in this area, these activities are not contingent on warmer weather. Shipping vessel traffic lanes for Boston Harbor are used throughout the year to import and export metal, salt, fuel, and a variety of other products. Similarly, the commercially important fishing grounds on Georges Bank involve year-round vessel traffic throughout the proposed area. The most dominant type of fishing gear used in this area is the bottom trawl. It is not known whether the bottom trawl, or other types of fishing gear, have an impact on the whale's habitat. Studies have demonstrated annual variability in the location and depth of observed northern right whale feeding in the Great South Channel (Kenney 1992). Commercial fishing in this area uses gear with mesh sizes that do not pose an immediate threat to the whale's planktonic food supply by impingement and subsequent depletion from the environment. In addition, groundfish trawling has been excluded from the area from February 1 to May 31 each year.

For the Georgia and Florida calving grounds, vessel traffic and fisheries continue to represent the activities that characterize the area's most concentrated resource use. Within the calving grounds, five major commercial shipping ports operate in the vicinity of the proposed critical habitat. Presumably, the majority of commercial fishing vessels that use the inshore waters to harvest shrimp and other commercially important species utilize these and other neighboring ports as well. Vessel traffic from recreational boating is also fairly extensive. It appears that, relative to the proposed areas in Cape Cod Bay and the Great South Channel, vessel traffic, is the greatest, in this proposed critical habitat area during northern right whale high use periods. Although designation of critical habitat will not impact the level of vessel traffic and fisheries that currently utilize the area, special management consideration may be needed to ensure maximum net productivity of the northern right whale population.

Other activities that could potentially alter northern right whale habitat or harm the species include dredge spoil disposal, municipal and industrial discharge, and mineral exploration. These activities will still require section 7 consultation. Designation of critical habitat in defined areas will help ensure that the habitat is not degraded, or, particularly in the case of the northeastern areas, that food sources are not appreciably degraded by indirect activities. Special management considerations for these activities may include a monitoring program that could be utilized to provide information relevant to potential impacts of direct or indirect activities on the marine system that provides food sources for northern right whales.

Expected Impacts of Designating as Critical Habitat

Designation of critical habitat in the proposed areas would not result in immediate and mandatory additional restrictions on use of the area. Therefore, direct economic impacts associated with designation of these areas are not anticipated.

Designation of critical habitat in these areas may result in an increase in administrative time and cost to Federal agencies that manage projects in the designated areas. However, these agencies are currently required to address habitat alteration issues in section 7 consultations, and as a result, any increase in administrative time or cost is expected to be minimal.

Proposed Critical Habitat; Essential Features

Cape Cod Bay

Cape Cod Bay is a large embayment on the U.S. Atlantic Ocean off of the State of Massachusetts. It is enclosed on the south and east by Cape Cod and on the west by the Massachusetts coastline. To the north, the bay opens to Massachusetts Bay and the Gulf of Maine. The Bay has an average depth of about 25 m, and a maximum depth of about 65 m. The deepest area of the Bay is in the northern section bordering Massachusetts Bay and the Gulf of Maine. Thermal stratification occurs in the Bay during the summer months. Surface waters typically range from 0 to 19 °C throughout the year. Salinity is fairly stable throughout most of the year at around 31–32 parts per thousand. Much of the bottom is comprised of unconsolidated sediments, with finer sediments occurring in the deeper waters (Davis 1984). In shallow areas, or where there is sufficient current, sediments tend to be coarser.

The late-winter/early spring zooplankton fauna of Cape Cod Bay consists primarily of copepods, which are represented predominantly by two species, *Arcartia clausi* and *A. tonsa*. Samples taken in the daytime indicated greater densities of copepods at greater depths. The copepod *Calanus finmarchicus*, shown to be an important food source to the northern right whale, has been found along inshore Cape Cod waters at densities of 100 individuals per cubic meter from approximately April to August. Waters in the Great South Channel, offshore of Cape Cod, have been found to support greater numbers of *C. finmarchicus* (closer to 1,000 individuals per cubic meter) from approximately April to December. This species is usually found at depths of 3 m and greater. *C. finmarchicus* ranges from as far north as Eastport, Maine and south to Cape Hatteras, North Carolina.

The area proposed for critical habitat designation is bounded by the following coordinates: 42°04.8′ N, 70°10.0′ W; 42°12′ N, 70°15′ W; 42°12′ N, 70°30′ W; 41°46.8′ N, 70°30′ W; and on the south and east, by the interior margin of Cape Cod, Massachusetts.

Great South Channel

The Great South Channel is a large funnel-shaped bathymetric feature at the southern extreme of the Gulf of Maine between Georges Bank and Cape Cod, Massachusetts. The channel is bordered on the west by Cape Cod and Nantucket Shoals and the east by Georges Bank. To the south, the channel narrows and rises to the continental shelf edge and deepsea canyons. To the north, the channel opens in to Murray and Wilkinson Basins. The average depth is about 175 m, with a maximum depth of about 200 m to the north near Wilkinson Basin. The channel becomes thermally stratified during the spring and summer months. Surface waters typically range from 3 to 17 °C between winter and summer.

Salinity is stable throughout the year at approximately 32–33 parts per thousand (Hopkins and Garfield 1979). Much of the bottom is comprised of silty, sandy sediments, with finer sediments occurring in the deeper waters.

The late-winter/early spring mixing of warmer shelf waters with the cold Gulf of Maine water funneled through the channel, causes a drastic increase in primary productivity in the area. The zooplankton fauna found in these waters are typically dominated by copepods, specifically *C. finmarchicus, Pseudocalanus minutus, Centropages typicus, Centropages hamatus,* and *Metridia lucens*. From the middle of winter to early summer, *C. finmarchicus* and *P. minutus* are the dominant species, which together made up between 60 and 90 percent of a sample (Sherman *et al.* 1987). In late spring *C. finmarchicus* alone makes up 60 to 70 percent of all sampled copepods. In the second half of the year, both species of *Centropages* dominate the waters, accounting for about 75 percent of all sampled copepod species. Other abundant taxa are euphausiids, cirripede larvae, coelenterates, chaetognaths, appendicularians and pteropods (Sherman *et al.* 1987).

The area proposed for critical habitat designation is bounded by the following coordinates: 41°40′ N, 69°45′ W; 41°00′ N, 69°05′ W; 41°38′ N, 68°13′ W; 42°10′ N, 68°31′ W.

Coastal Calving Grounds off Georgia and Florida

The proposed critical habitat for the southeastern Atlantic coast encompasses coastal waters between 31°15′ N. (approximately located at the mouth of the Altamaha River, Georgia) and 30°15′ N. (approximately Jacksonville, Florida) from the coast out to 15 nautical miles offshore; and the coastal waters between 30°15′ N. and 28°00′ N. (approximately Sebastian Inlet, Florida) from the coast out to 5 nautical miles. The coastal waters off Georgia and Florida have an average depth of about 30 m, and a maximum depth of about 60 m. The deepest area occurs along the coast of Florida, just south of Cape Canaveral. There is very little information on seasonal water temperature and salinity range for this area, although it is expected that temperature and salinities would be higher than northern waters.

Northern Florida is a transition area separating most subtropical and more temperate species of southeastern marine communities. There is quite a bit of seasonal and annual variation that occurs in this area, exhibited by large, cyclic changes in abundance and dominance of many plankton species. In fact, changes in abundance from year to year may be so great that monitoring studies conducted for only 1 or 2 years may not be sensitive enough to assess the temporal variability of the plankton community. Currently, there is little information available that describes the coastal marine plankton in this area. However, the recorded preferred food of the northern right whale, *C. finmarchicus*, does not occur in these waters.

The three areas described above represent 80 to 90 percent of the nothern right whale sightings within the described essential habitat.

Public Comments Solicited

NMFS is soliciting information, comments or recommendations on any aspect of this proposed rule from the public, concerned government agencies, the scientific community, industry, private interests, or any other interested party. NMFS will consider all comments received by the date specified (see DATES) in reaching a final decision.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impacts specifically resulting from the designation of critical habitat, above the impacts attributable to listing the species from other authorities, are expected to be minimal. The General Counsel of the Department of Commerce has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act; therefore, a regulatory flexibility analysis is not required.

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

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

The Assistant Administrator has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Programs of the States of Massachusetts, Georgia, and Florida. This determination has been submitted for review by the responsible state agencies under section 3.7 of the Coastal Zone Management Act.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally, are categorically excluded from the requirement to prepare an

environmental assessment or an environmental impact statement. However, in order to more clearly evaluate the minimal impacts of the proposed critical habitat designation, NMFS has prepared an environmental assessment. Copies of the assessment are available on request (see FOR FURTHER INFORMATION CONTACT).

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Kraus, S.D. and R.D. Kenney. 1991. Information on right whales (*Eubalaena glacialis*) in three proposed critical habitats in U.S. waters of the western North Atlantic Ocean. NTIS No. PB91–194431. 65 pp.

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Sherman, K., W.G. Smith, J.R. Green, E.B. Cohen, M.S. Berman, K.A. Marti and J.R. Goulet. 1987. Zooplankton production and fisheries of the northwestern shelf. *In*: Backus, R.H. 1987. Georges Bank. MIT Printing Press, Cambridge, Massachusetts. 550 pp.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: May 14, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. A new § 226.13 is added to subpart B to read as follows:

§ 226.13 Northern Right Whale (Eubalaena glacialis).

(a) Cape Cod Bay, Massachusetts—The area bounded by 42°04.8′ N, 70°15′ W; 42°12′ N, 70°15′ W; 42°12′ N; 70°30′ W; 41°46.8′ N; 70°30′ W; and on the south and east by the interior shore line of Cape Cod, Massachusetts.

(b) Great South Channel—The area bounded by 41°40′ N; 69°45′ W; 41°00′ N; 69°05′ W; 41°38′ N; 68°13′ W; and 42°10′ N; 68°31′ W.

(c) Southeastern United States—The coastal waters between 31°15′ N. and 30°15′ N. from the coast out 15 nautical miles; and the coastal waters between 30°15′ N. and 28°00′ N. from the coast out 5 nautical miles.

[FR Doc. 93–11915 Filed 5–14–93; 5:06 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 95
Wednesday, May 19, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18-93]

Foreign-Trade Zone 61—San Juan, PR; Application for Subzone, Sterling Pharmaceutical Plant, Barceloneta, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Sterling Pharmaceuticals, Inc. (Sterling) (subsidiary of Sterling Winthrop, Inc./ Eastman Kodak Company) in Barceloneta, Puerto Rico, adjacent to the San Juan Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 12, 1993.

Sterling Winthrop is a global pharmaceutical firm whose primary product lines include: Diagnostic imaging agents, hormonal products, cardiovasculars, analgesics, antihistamines and muscle relaxants. In 1991, Sterling Winthrop and Elf Sanofi, a French pharmaceutical and health care products company, formed the Sanofi Winthrop alliance to jointly develop, manufacture and market products worldwide. This proposal is part of an overall company cost reduction effort. (Applications for subzone status are also being submitted for plants in McPherson, Kansas; Rensselaer, New York; and Des Plaines, Illinois.)

Sterling's Puerto Rico plant (53.4 acres, 8 bldgs.) is located at Route 140, Km. 64.4, 30 miles west of San Juan. The facilities (520 employees) are used to produce bulk pharmaceutical chemicals, and prepared prescription and over-the-counter pharmaceutical products including diagnostic imaging agents, analgesics and antihistamines. The diagnostic imaging agents which include "Omnipaque", "Visapaque", and "Omniscan" constitute most of current production. Foreign-sourced materials will account for, on average, 50 percent of the finished products' value and include the following specific ingredients: Iohexol, Gadodiamide, Iodixinol, Cloropaopanedial and Dichloroquinoline. General categories include the following materials and their derivatives: Hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, medicaments, and pharmaceutical products. Some 9 percent of the products are exported.

Zone procedures would exempt Sterling from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 16.2%, with most falling in the 3.9%–6.9% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent (weighted average—13 percent). The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 19, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 2, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, room G–55, Federal Building, Chardon Avenue, San Juan, Puerto Rico 00918.

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

Dated: May 13, 1993.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93–11885 Filed 5–18–93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-821-804]

Notice of Final Determination of Sales at Less Than Fair Value: Ferrosilicon From the Russian Federation

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

EFFECTIVE DATE: May 19, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

Final Determination

The Department of Commerce ("the Department") determines that ferrosilicon from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances exist with respect to imports of ferrosilicon from the Russian Federation. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmative preliminary determination on December 29, 1992 (57 FR 61876), the following events have occurred.

On December 24, 1992 (58 FR 79, January 4, 1993), we preliminarily found affirmative critical circumstances with respect to imports of ferrosilicon from the Russian Federation. Accordingly, we instructed the Customs Service to suspend liquidation of all entries of ferrosilicon from the Russian

Federation from September 30, 1992, a date 90 days prior to the date of publication of the notice of preliminary determination in the **Federal Register**.

On January 8, 1993, we received a letter stating that petitioners do not request a hearing in this investigation nor in the recently completed investigations of ferrosilicon from Kazakhstan and Ukraine unless another interested party submits such a request. As we did not receive such a request on behalf of any other interested party in the Russian investigation, no hearing was held.

On March 1, 1993, we received a request from the Government of the Russian Federation to extend the deadline for the final determination in order to allow the Department sufficient time to consider additional information on the record of the investigation. On March 3, 1993, we received a letter from petitioners opposing the extension request filed on behalf of the Government of the Russian Federation. On March 3, 1993, we postponed the final determination, in accordance with 19 CFR 353.20(b), until not later than May 13, 1993 (58 FR 13050, March 9, 1993).

On March 29, 1993, we received a draft suspension agreement, submitted on behalf of exporters of ferrosilicon from the Russian Federation. However, no mutually acceptable agreement was reached by the initialing deadline of April 13, 1993.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the *Harmonized Tariff Schedule of the United States* (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Class or Kind Allegation

We received a request from Societe Anonyme des Minerais and Minerais U.S. Inc. (Minerais), a Luxembourg corporation engaged in the marketing and distribution of ferro-alloys, ores and metals, and its U.S. subsidiary, that the Department identify two separate classes or kinds of merchandise: (1) Ferrosilicon with a silicon content of 55 percent silicon or less (FeSi 50) and (2) ferrosilicon containing more than 55 percent silicon (FeSi 75). Minerais alleged that if two classes or kinds of merchandise were identified, petitioners would not have standing with respect to low silicon content ferrosilicon. Petitioners submitted comments in opposition to Minerais' request. For the reasons set forth in our response to Interested Party Comment 2 in the *Final Determinations of Sales at Less Than Fair Value: Ferrosilicon from Kazakhstan and Ukraine (Final Determination: Ferrosilicon from Kazakhstan)* (58 FR 13050, March 9, 1993), we have determined that the merchandise subject to this investigation constitutes one class or kind of merchandise.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in the Russian Federation investigation. In deciding to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. As detailed below, exporters of ferrosilicon from the Russian Federation did not adequately respond to the Department's requests for information.

The Russian Federation is a non-market economy (NME) country in accordance with section 773(c) of the Act. Therefore, we require that the Government of the Russian Federation provide information to the Department on behalf of all producers and exporters within the Russian Federation.

As detailed in the preliminary determination, the Department made numerous attempts to obtain questionnaire responses from the Government of the Russian Federation. We have granted every possible extension of time to give the Government of the Russian Federation sufficient opportunity to provide the information requested. We solicited factors of production information both as part of the original questionnaire (section D) and in a cost of production (COP) questionnaire. We did not receive factors of production information from any party in the Russian Federation.

Consequently, because the information requested was not provided we based our determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Minerais

As detailed in the preliminary determination, Minerais entered questionnaire responses onto the record of the Russian investigation. Minerais' responses, however, were originally submitted in the recently completed investigation of ferrosilicon from Kazakhstan. Minerais purchased ferrosilicon from Promsyrioimport, the primary exporter of the subject merchandise from the former Soviet Union to the United States during the period of investigation, then exported the merchandise to its U.S. affiliate. Minerais claimed that because it acted as an independent reseller in an intermediate country, foreign market value (FMV) should be based on Minerais' sales in third-country markets, not on a factors of production analysis. Minerais claims that it should be treated as the respondent in the Russian investigation and that the failure of the

Government of Russia to respond to requests for information should not affect the analysis of Minerais' sales.

We determine that Minerais does not qualify as an intermediate country reseller under section 773(f) of the Act, and hence, is not a respondent in this case. We have received insufficient information about the production, sale, and export of ferrosilicon in the Russian Federation. In particular, we received no information regarding whether producers had knowledge of destination. Therefore, Minerais cannot be considered either an intermediate country reseller or a "trading company" for purposes of calculating less than fair value (LTFV) margins for exports from the Russian Federation to the United States. See Interested Party Comment 4 of *Final Determination: Ferrosilicon from Kazakhstan* (58 FR 13050, March 9, 1993).

Fair Value Comparisons

To determine whether sales of ferrosilicon from the Russian Federation were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on BIA, which was information supplied by petitioners. Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon from the former Union of Soviet Socialist Republics (U.S.S.R.) for the period September 1991 to February 1992. The available import statistics did not differentiate imports from the former republics of the U.S.S.R.

Ferrosilicon was sold through the same centralized exporting company. All ferrosilicon exported from the Russian Federation was priced for export by Promsyrioimport. Thus, the Customs value shown for imports from these countries reflected the prices actually paid for ferrosilicon sold for exportation. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Foreign Market Value

We based FMV on BIA, which was information provided by the petitioner. Petitioners contend that the FMV of Russian-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns NME countries. In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, the Russian Federation will continue to be treated as an NME until this presumption is overcome (*see Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan*, 57 FR 23380 (June 3, 1992)) (final determinations have not been reached in these investigations because they have been suspended under suspension agreements).

Petitioners calculated FMV on the basis of the valuation of the factors of production for AIMCOR, a U.S. producer of ferrosilicon. In valuing the factors of production, petitioners used Mexico as a surrogate country. For purposes of the initiation, we accepted Mexico as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1990 wage rates and 1991 energy rates in Mexico. Petitioners based the value of raw material costs for steel scrap, quartzite, coke, bituminous coal and charcoal on 1991 f.a.s. export values from the United States to Mexico. Petitioners added an amount for foreign inland freight expense to Mexico for these raw materials. Petitioners based the value of raw material costs of electrode paste on a delivered import price from Brazil to Mexico. Petitioners based raw material costs for diesel oil, woodchips, water and other processing materials on its own average costs from October 1990 through September 1991.

Pursuant to section 773(e)(1) of the Act, petitioners added the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Critical Circumstances

Petitioners alleged that critical circumstances exist with respect to imports of ferrosilicon from the Russian Federation. Section 735(a)(3) of the Act provides that critical circumstances exist when:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind or merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A)(i), above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding criterion (A)(ii) above, we normally consider margins of 25 percent or more in the case of purchase price, and 15 percent or more in the case of exporter sales price, comparisons sufficient to impute knowledge of dumping. Since the dumping margins for all exporters of ferrosilicon from the Russian Federation are in excess of 25 percent, we can impute knowledge under section 735(a)(3)(A)(ii) of the Act.

Regarding criterion (B) above, because we did not receive adequate questionnaire responses from any party in the Russian Federation, we determine that imports were massive over a relatively short period of time based on BIA. Accordingly, we determine that critical circumstances exist in this investigation.

Standing Allegation

We received a letter from Keokuk Ferro-Sil, Inc. (Keokuk), an Iowa-producer of 50 percent ferrosilicon, stating opposition to the antidumping investigation of ferrosilicon from the Russian Federation. We have considered all of the information provided, and the written comments filed by, Keokuk, petitioners and Minerais. We have determined that Keokuk has provided insufficient evidence to demonstrate that petitioners are not filing on behalf of the domestic industry. For further discussion, *see* Interested Party Comment 1 *Final Determination: Ferrosilicon from Kazakhstan* (58 FR 13050, March 9, 1993).

Continuation of Suspension of Liquidation

In accordance with sections 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ferrosilicon from the Russian Federation as defined in the "Scope of Investigation" section of this notice, that

are entered, or withdrawn from warehouse, for consumption on or after September 30, 1992, which is 90 days prior to December 29, 1992, the date of publication of the preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below for the Russian Federation. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted-average margin	Critical circumstances
All Manufacturers/Producers/Exporters.	104.18%	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: May 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–11886 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–533–809]

Postponement of Preliminary Antidumping Duty Determination: Certain Forged Stainless Steel Flanges From India

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

EFFECTIVE DATE: May 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–1756.

POSTPONEMENT: On May 10, 1993, we received a letter from Flowline Division, Markovitz Enterprises, Gerlin, Incorporated, Ideal Forging Corporation and Maass Flange Corporation, petitioners in this investigation, requesting that the Department postpone the preliminary determination in accordance with section 733(c)(1) of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1673b(c)(1)). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determination until July 29, 1993.

This notice is published pursuant to section 733(c)(2) of the Act and 19 C.F.R. 353.15(d).

Dated: May 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–11887 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–821, A–122–824, A–588–830, and A–274–801]

Initiation of Antidumping Duty Investigations: Steel Wire Rod From Brazil, Canada, Japan, and Trinidad and Tobago

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

EFFECTIVE DATE: May 19, 1993.

FOR FURTHER INFORMATION CONTACT: Louis Apple or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1769 or (202) 482–4136, respectively.

Initiation of Investigations

The Petitions

On April 23, 1993, we received petitions filed in proper form by the Connecticut Steel Corp., Georgetown Steel Corp., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Raritan River Steel Co. (petitioners). At the request of the Department of Commerce (the Department), petitioners filed several supplements to the petitions to correct methodological errors and support the data presented. In accordance with 19 CFR 353.12, petitioners allege that steel wire rod (SWR) from Brazil (Raritan River Steel Co. is not included as a petitioner in the Brazilian allegation), Canada, Japan (Georgetown Steel Corp. is not included as a petitioner in the Japanese allegation), and Trinidad and Tobago are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Acting Assistant Secretary for Import Administration.

Scope of Investigations

The products covered by these investigations are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. Excluded from the scope of these investigations are free-machining steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium. Excluded as well are stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.90.6000, and 7227.90.6050 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Brazil

Petitioners based United States Price (USP) on information obtained through their own business activity. This information included delivered prices of SWR to unrelated U.S. customers.

Petitioners calculated USP by subtracting movement charges and U.S. customs duties. Petitioners adjusted movement charges incurred in Brazil to account for the difference between the time periods of the U.S. price and the quoted movement charges. U.S. import statistics were used to estimate ocean freight and marine insurance charges.

Foreign Market Value (FMV) was based on home market price quotes for similar merchandise, exclusive of indirect taxes, obtained by an industry consultant. Petitioners adjusted the price quotes to account for the difference between the time periods of the U.S. and home market prices. Petitioners calculated FMV by subtracting movement changes, value added taxes, and a cash discount. FMV was converted to U.S. dollars using the exchange rate for the time period of the U.S. price. Petitioners also made a circumstance of sale adjustment for credit expense. No information regarding a difference in merchandise adjustment (difmer) was available to petitioners. However, petitioners stated that the U.S. SWR grade was more expensive to produce than the home market grade; therefore, making the comparison without a difmer would not overestimate the alleged dumping margin. In accordance with *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico*, 58 FR 25803 (April 28, 1993) (*Mexican Cement*), petitioners calculated the amount of indirect taxes which would be applicable to home market sales, except for the IPI (Tax on Industrialized Products), and added the resulting amount to both USP and FMV. Petitioners did not adjust for the IPI because they were unable to find information on the IPI rate for this product.

The dumping margin of SWR from Brazil alleged by petitioners is 30.67%.

Canada

Petitioners based USP information obtained through their own business activity. This information included delivered prices of SWR to unrelated U.S. customers. Petitioners calculated USP by subtracting movement charges and U.S. customs duties.

FMV was based on home market price quotes for identical merchandise, exclusive of value-added tax (VAT). Petitioners calculated FMV by subtracting movement charges, and converted the prices to U.S. dollars using the contemporaneous exchange rates found in the *U.S. Customs Bulletin*. Petitioners also made a circumstance of sale adjustment for differences in credit expenses. In accordance with *Mexican Cement*, petitioners calculated the amount of VAT which would be applicable to home market sales and added the resulting amount to both USP and FMV.

The range of dumping margins of SWR from Canada based on a price-to-price comparison of USP to FMV alleged by petitioners is 13.65% to 34.82%.

Japan

Petitioners based USP on information obtained through their own business activity and that of another U.S. producer, who is not a petitioner. This information included delivered prices to unrelated U.S. customers. Petitioners calculated USP by subtracting for ocean freight, marine insurance, wharfage and loading charges incurred in Japan, U.S. customs duties and unloading fees, and U.S. inland freight. U.S. import statistics were used to estimate ocean freight and marine insurance charges.

FMV was based on price quotes for the most similar grade of SWR, exclusive of consumption tax, from the same producer from whom U.S. pricing information was obtained. Petitioners provided delivered prices in Japanese yen and converted the prices to dollars using the contemporaneous exchange rate found in the *U.S. Customs Bulletin*. Based on information received from a trade consultant, petitioners subtracted amounts for foreign inland freight, insurance and unloading charges, and made a circumstance of sale adjustment for credit expenses. No information regarding a difmer was available to petitioners. However, petitioners stated that they do not believe the absence of a difmer significantly affects the alleged dumping margins. Our analysis indicates that the products differ only slightly with respect to grade. In accordance with *Mexican Cement*, petitioners calculated the amount of consumption taxes which would be applicable to home market sales and added the resulting amount to both USP and FMV.

The range of dumping margins of SWR from Japan alleged by petitioners is 24.71% to 54.65%.

Trinidad and Tobago

Petitioners based USP on information obtained through their own business activity. This information included delivered prices of SWR to unrelated U.S. customers. Petitioners calculated USP by subtracting movement charges and customs duties, and used U.S. import statistics to estimate ocean freight and marine insurance charges.

Petitioners were unable to obtain a home market price quote from Trinidad and Tobago, and instead used constructed value as the basis for FMV. Petitioners based on the constructed value on costs of a domestic mill having a production process similar to that of the Trinidadian producer. Petitioners then added selling, general and administrative expenses, based on a U.S. Government report of the Trinidadian producer's experience, and the statutory minimum for profit to compute the constructed value. Petitioner's cost information was corrected to reflect cost factors and amounts reported in their May 7, 1993, submission, unsupported costs and expenses were removed, and financial expenses were added.

The alleged dumping margin of SWR from Trinidad and Tobago based on a comparison of price to constructed value, after the Department's revisions, is 31.83%.

Allegations of Home Market or Third Country Sales Below Cost of Production: Canada and Trinidad and Tobago

Petitioners allege that specific potential respondents in the Canadian investigation are selling the subject merchandise in the home market at prices below their costs of production. These allegations are based on a comparison of company-specific home market prices with the cost of production (COP). COP was based on the COP of a comparable U.S. producer adjusted for known differences in the country of production, and/or company specific information, and on the company's financial statements, when applicable.

Based on the information presented, we have reason to believe or suspect that the home market sales of the following Canadian producers are being made at less than COP: Ivaco, Inc., Sidbec-Dosco, Inc., and Stelco, Inc. See "Costs of Production for Canadian Manufacturers" Memorandum dated May 12, 1993, which is on file in the Import Administration Central Records Unit. Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we will initiate COP investigations with respect to each of these companies if it is named as a respondent in the investigation.

Petitioners also allege that ISCOTT, the potential respondent in the Trinidadian investigation, is selling the subject merchandise in Mexico, a third-country market, at prices below its costs of production. This allegation is based on a comparison of a company-specific third-country price with the COP. COP was based on the COP of a comparable

U.S. producer adjusted for known differences in the country of production, and company specific information.

Based on the information presented, we have reason to believe or suspect that ISCOTT's third country sales to Mexico are being made at less than COP. See "Cost of Production for ISCOTT" Memorandum dated May 12, 1993, which is on file in the Import Administration Central Records Unit. Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we will initiate a COP investigation with respect to ISCOTT if third-country sales to Mexico are determined to be the appropriate basis for foreign market value in the Trinidadian investigation.

Initiation of Investigations

We have examined the petitions for SWR from Brazil, Canada, Japan, and Trinidad and Tobago, as amended, and have found that the petitions meet the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of SWR from Brazil, Canada, Japan, and Trinidad and Tobago are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, we will make our preliminary determinations by September 30, 1993.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by June 7, 1993, whether there is a reasonable indication that imports of SWR from Brazil, Canada, Japan, and Trinidad and Tobago are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in any of these investigations will result in its termination; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–11889 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–842–802]

Termination of Suspension Agreement and Resumption of Investigation on Uranium From Tajikistan

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

ACTION: Notice of termination of suspension agreement and resumption of antidumping duty investigation.

SUMMARY: The Government of Tajikistan has terminated the suspension agreement on uranium from Tajikistan. Therefore, the Department of Commerce ("the Department") is resuming the investigation.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Robert Hamilton, Office of Agreements Compliance (for matters pertaining to the termination of the suspension agreement), and Lawrence P. Sullivan or Carole Showers, Office of Investigations (for matters pertaining to the resumption of the investigation), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–2822, 482–0182, 482–0114, or 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department suspended the antidumping duty investigation involving uranium from Tajikistan. The basis for the suspension was an agreement by the Government of Tajikistan (GOT) to restrict exports of uranium to the United States. The agreement was signed on the behalf of the GOT by Mr. Y. Nesterov, Director General of the Tajik production association "Vostokredmet", in accordance with an October 15, 1992, authorization signed by Mr. Djamshed Hilolovitch Karimov, First Deputy Prime Minister of the Republic of Tajikistan.

Section XII of the agreement provided that the GOT could terminate the agreement effective 60 days after providing the Department with notice of such termination. On October 30, 1992, counsel for Tajikistan transmitted an October 29 letter from Mr. Nesterov notifying the Department that the GOT was terminating the agreement effective 60 days from the date of the letter.

In November, 1992, the U.S. Department of State notified the Department that the Prime Minister of Tajikistan, Mr. A. Abdullodjanov, did not wish to terminate the agreement. As a result of this communication, the Department, through the U.S. Department of State, attempted to obtain written instructions from Prime Minister Abdullodjanov regarding the GOT's intentions vis-a-vis the suspension agreement.

On December 16, 1992, the Department received a letter dated December 11, 1992, from Mr. Nesterov reiterating that the GOT was withdrawing from the suspension agreement. Because of the earlier communication from Prime Minister Abdullodjanov, the Department continued to pursue efforts to obtain written instructions from the Prime Minister of Tajikistan on whether the GOT wished to terminate the agreement.

On April 26, 1993, counsel for the GOT transmitted two letters to the Department from the Chairman of the Council of Ministers of the Republic of Tajikistan, Mr. A. Abdullodjanov. Letter No. 1–10/576 of April 13, 1993, confirmed that the Republic of Tajikistan terminated the agreement and reconfirmed prior notification of termination. The prior notification referenced in the letter, however, was a January 19, 1993, letter which, according to counsel for the GOT, was never delivered to the Department and which the Department never received. Letter No. 345 of April 19, 1993, authorized the Plenipotentiary Representative of the Republic of Tajikistan in Moscow, Djamshed Hilolovitch Karimov, to conduct negotiations and sign documents regarding all issues relating to sales of uranium in the United States, including the antidumping investigation.

On April 26, 1993, the Department of State confirmed that it recognizes Mr. Abdullodjanov as the Prime Minister of the Republic of Tajikistan. Based on the confirmation and the letter confirming Mr. Karimov's authority to act in uranium matters and hence, Mr. Karimov's authority to designate Mr. Nesterov in October 1992 as an official representative of the GOT, the Department is terminating the agreement effective April 26, 1993.

Scope of the Agreement

Imports covered by this investigation include natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing uranium

enriched in U^{235} or compounds of uranium enriched in U^{235}. Both low-enriched uranium (LEU) and highly-enriched uranium (HEU) are included within the scope of this investigation. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. The uranium subject to this investigation is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule (HTS). HTS numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Resumption of Investigation

Because Tajikistan is terminating the agreement, there no longer exists an agreement under section 734(l) of the Tariff Act of 1930, as amended ("the Act"), which "prevent[s] the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation." Therefore, in accordance with section 734(l)(2) of the Act, the Department must resort to section 734(i)(1)(B), which directs us to resume the investigation as if our preliminary determination were published on the date of termination. In accordance with section 735(a), we will issue a final determination within 75 days of April 26, 1993, unless respondents request an extension pursuant to 19 CFR 353.20(b).

In making our final determination in this investigation, the Department will use only information already submitted in the investigation, which was suspended on October 16, 1992. (*see Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Antidumping Investigations and Amendment of Preliminary Determinations;* (57 FR 49220; October 30, 1992)).

Suspension of Liquidation

In our preliminary determination in this investigation (*see Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan* (57 FR 23380; June 3, 1992)), the Department preliminarily determined that critical circumstances exist with respect to imports of uranium from Tajikistan. Therefore, in accordance with section 733(e) of the Act, the Department is instructing the U.S. Customs Service (1) to suspend liquidation of all unliquidated entries of uranium, as defined in the *Scope of Investigation* section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 5, 1992 (90 days prior to the publication of our preliminary determination) through October 16, 1992 (the signing of the suspension agreement), and (2) to suspend liquidation of all entries of uranium from Tajikistan that are entered, or withdrawn from warehouse, for consumption on or after April 26, 1993. The Customs Service shall require a cash deposit or bond equal to 115.82 percent *ad valorem*, the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers, and exporters of uranium from Tajikistan.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission ("ITC") of this determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the latter of 120 days after the effective date of this notice or 45 days after publication of our final determination.

Dated: May 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–11884 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees from June 1–3, 1993. The meeting will be held at the Norfolk Airport Hilton, 1500 North Military Highway, Norfolk, VA; telephone: (804) 466–8000. The agenda is as follows:

The Council's Coastal Migratory Committee will meet on June 1 from 1 p.m. until 3 p.m.; this will be followed by a meeting of the Large Pelagic/Shark Committee from 3 p.m. until 5 p.m. Also on June 1 at 7 p.m., there will be a hearing on Amendment #5 to the Summer Flounder Fishery Management Plan (FMP).

The Council will begin its regular session on June 2 at 8 a.m. and adjourn at 4:30 p.m., at which time there may be a Seafood Inspection Committee meeting. On June 3 the Council will begin a Demersal Species Committee meeting from 8 a.m. until 9:30 a.m. The Committee meeting will be followed by a regular Council session which is scheduled to adjourn at approximately 12 noon.

In addition to hearing committee reports at this meeting, the Council will discuss a possible Atlantic States Marine Fisheries Commission/Council Weakfish FMP, review the National Marine Fisheries Service proposed regulations for the swordfish pair trawl fishery, hear recommendations that may be offered on Amendment #5 to the Multispecies FMP, may adopt 1994 surf clam and ocean quahog quotas, and consider other fishery management matters as necessary. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may go into closed session (not open to the public) to discuss personnel and/or other national security matters.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: May 13, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–11788 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce

The South Atlantic Fishery Management Council will hold a Habitat and Environmental Protection Advisory Panel (Panel) meeting on June 2–3, 1993. The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000. The meeting will begin at 1 p.m. on June 2 and adjourn at 6 p.m., and begin at 8 a.m. on June 3 and adjourn at 1 p.m.

The following topics are tentatively scheduled for discussion by the Panel:

(1) Habitat issues contained in reauthorization of the Magnuson Fishery Conservation and Management Act;

(2) Harvest of "live rock" in the South Atlantic and possible regulation under the Coral and Coral Reef Fishery Management Plan;

(3) Results of sargasum habitat research;

(4) The Florida Keys National Marine Sanctuary;

(5) Status of the South Atlantic Southeast Monitoring and Assessment Program (SEAMAP) bottom mapping project; and

(6) Status of fisheries habitat and restoration efforts in the Southeast Region.

A detailed agenda was made available to the public on May 11. For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407–4699, telephone: (803) 571–4366.

Dated: May 13, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–11787 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Permit No. 836 (P79F); Marine Mammals

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

On March 16, 1993, notice was published in the **Federal Register** (58 FR 14203) that an application had been filed by the Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064, (Agents: Drs. Daniel Costa, Burney J. Le Boeuf, and Charles L. Ortiz), for a Permit to: capture and handle up to 3,880 northern elephant seals (*Mirounga angustirostris*); unintentionally kill up to 3 elephant seals during the conduct of the authorized research activities; import up to 40 northern elephant seal and southern elephant seal (*Mirounga leonina*) tissue samples (plasma, milk and dermal biopsies) and export samples from northern elephant seals (only) from/to England, Argentina, Australia, Mexico, and Japan; and incidentally harass up to 54,400 seals

Notice is hereby given that on May 12, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit, as modified, is available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: May 12, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–11824 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit

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

ACTION: Receipt of request to modify permit No. 778 (P772#59).

Notice is hereby given that the Southwest Fisheries Science Center, NMFS, La Jolla, CA 92038, has applied in due form for a modification to a scientific research permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR part 217–222).

The Applicant is currently authorized to conduct various studies on up to 1200 Hawaiian monk seals (*Monachus schauinslandi*) over a 2-year period, including the capture, instrumentation with satellite transmitters, release and subsequent recapture (to retrieve the instruments) of up to 4 of the 1200 animals.

The Applicant now requests authorization to capture and instrument an additional 3 animals with satellite transmitters (subsequently recapturing them to retrieve the instruments), and to bleach-mark up to 250. This work would be carried out on a subset of the 1200 animals for which other research activities were previously authorized. The Applicant also requests that the effective date for the Permit be extended through April 30, 1996. This time extension would not represent any additional takes.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Highway, room 7234, 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 are 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, NMFS, 1335 East-West Highway, Suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

Dated: May 12, 1993.

William W. Fox, Jr.,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–11823 Filed 5–18–93; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISION

Senior Executive Service; Performance Review Board; Membership

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of names of members.

SUMMARY: This notice lists the individuals who have been appointed to the Commission's Senior Executive Service Performance Review Board.

EFFECTIVE DATE: May 19, 1993.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207-0001.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207-0001, telephone (301) 504-0980.

Members of the Performance Review Board are listed below;

Carol G. Dawson
Mary Sheila Gall

Thomas W. Murr, Jr.
Warren J. Prunella
Alfred L. Roma
Bert Simson
Jerry G.Thorn
David Schmeltzer (alternate)
Douglas L. Noble (alternate)
Andrew G. Ulsamer (alternate)
Robert D. Verhalen (alternate)
William W. Walton (alternate)

Alternate members may be designated by the Chairman or the Chairman's designee to serve in the place of regular members who are unable to serve for any reason.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 93–11890 Filed 5–18–93; 8:45 am]
BILLING CODE 6355–01–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 93–C0008]

Unique Industries, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Federal Hazardous Substances Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with, Unique Industries, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 3, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 93–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (attached)

Dated: May 12, 1993.
Sheldon D. Butts,
Deputy Secretary.

Settlement Agreement and Order

1. Unique Industries, Inc. (hereinafter, "Unique"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Unique knowingly caused the introduction into commerce of certain banned hazardous substances, namely toys, and caused the export of certain banned hazardous substances in violation of sections 2(q)(1)(A) and 14(d) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1)(A) and 1273(d), which are prohibited acts under sections 4 (a) and (i) of the FHSA, 15 U.S.C. 1263 (a) and (i).

I. Jurisdiction

2. The Commission has jurisdiction over Unique and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(A), 4 (a) and (i) and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1)(A), 1263 (a) and (i) and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Unique is a corporation organized and existing under the laws of the State of Pennsylvania with its principal corporate offices located at 2400 S. Weccacoe Avenue, Philadelphia, PA 19148–4928. Unique is engaged, among other things, in the business of importing and selling domestically children's toys and novelty items.

III. Allegations of the Staff

5. From at least October 18, 1990, to May, 1992, Unique introduced into interstate commerce, certain toys, namely "Little Big Haulers" model 5016, "Racers" model 2010, and "Press and Go Baby Buggy" model 7403, which are intended for use by children under three years of age. These toys failed to comply with the Commission's requirements for toys and other articles intended for use by children under three years of age which present choking, aspiration, or ingestion hazards because of small parts. (Small Parts Regulation, 16 CFR Part 1501.) One or more of the parts of the toys in question separated when subjected to the use and abuse testing specified in 16 CFR 1500.51 and 1500.52. The separated parts fit entirely within the test cylinder specified in 16 CFR 1501.4.

6. Because these toys failed to meet the requirements of the Small Parts Regulation, each of them presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts). Pursuant to 16 CFR 1500.18(A)(9), each of those toys is a "banned hazardous substance" within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance). The introduction into interstate commerce of these banned hazardous substances by Unique Industries, Inc. is a prohibited act pursuant to section 4(a) of the FHSA, 15 U.S.C. 1263(a).

7. Pursuant to section 14(d) of the FHSA 15 U.S.C. 1273(d) and 16 CFR part 1019, Unique is required to notify the Commission, in writing, prior to the exportation of any banned hazardous substance. This notice must specify the (1) anticipated shipment date; (2) country and port of destination; (3) the quantity of the substance that will be exported; and (4) any additional information required by regulation.

8. On October 18, 1990 and March 5, 1991, the staff collected samples of Model 5016 "Little Big Haulers" and Model 2010 "Racers." Based on testing by the Commission's Engineering Laboratory, each of these products is a "banned hazardous substance" under the Federal Hazardous Substance Act, 15 U.S.C. 1261 *et seq.* Unique was advised of these findings in letters from the Commission's Eastern Regional Office on January 11, and March 26, 1991.

9. In the January 11, 1991 letter, and in previous contact with the staff, Unique was advised, or otherwise made aware, of the alternatives for disposing of these violative products, including reexport, and the appropriate procedures to follow.

10. In its letter of April 24, 1992 to the Commission's Philadelphia Satellite Office, Unique advised that on or about December 12, 1991, it had reexported to its suppliers 21,216 units of item #5016 and 32,286 units of item #2010 on invoice numbers 915016R and 912001R, respectively.

11. Unique's failure to provide the Commission with advance notice of its intent to export these two products

constitutes separate violations of the export notification requirements of section 14(d) of the FHSA, 15 U.S.C. 1273(d), and are prohibited acts under section 4(i) of the FHSA, 15 U.S.C. 1263(i).

IV. Response of Unique

12. Unique denies the allegations of the staff that it has knowingly introduced or caused the introduction into commerce of the aforesaid banned hazardous toys, that it knowingly failed to comply with export notification requirements of the FHSA, or that it has violated the FHSA in any way.

V. Agreement of the Parties

13. The Consumer Product Safety Commission has jurisdiction over Unique and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety At (15 U.S.C. 2051 *et seq.*), and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

14. Unique agrees to pay to the Commission a civil penalty in the amount of Fifteen Thousand and 00/100 Dollars ($15,000.00) within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in full settlement of the staff's allegations set forth in paragraphs five through eleven above that Unique violated the FHSA.

15. The Commission does not make any determination that Unique knowingly violated the FHSA. The Commission and Unique agree that this Agreement is entered into for the purposes of settlement only.

16. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Unique knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Unique failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)-(h). If the commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

19. The parties further agree that the Commission shall issue the attached Order, incorporated herein by reference; and that a violation of the Order shall subject Unique to appropriate legal action.

20. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

21. The provisions of the Settlement Agreement and Order shall apply to Unique and each of its successors and assigns.

Dated: February 26, 1993.

Respondent Unique Industries, Inc.

Everett Novak,

President, Unique Industries, Inc., 2400 S. Weccacoe Avenue, Philadelphia, PA 19148.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Office of Compliance and Enforcement, Division of Administrative Litigation.

Dated: March 15, 1993.

Melvin I. Kramer,

Trial Attorney, Office of Compliance and Enforcement, Division of Administrative Litigation.

Order

Upon consideration of the Settlement Agreement entered into between respondent Unique Industries, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Unique; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, That upon final acceptance of the Settlement Agreement, Unique Industries, Inc. shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of Fifteen Thousand and 00/100 Dollars ($15,000.00) within twenty (20) days after service of the Final Order and Decision in this matter.

In the Matter of Unique Industries, Inc.

Provisionally accepted and Provisional Order issued on the 12th day of May 1993.

By order of the Commission.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 93–11785 Filed 5–18–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and OMB Control Number: Application for Correction of Military Record; DD Form 149; OMB No. 0704–0003

Type of Request: Reinstatement

Number of Respondents: 54,425

Responses Per Respondent: 1

Annual Responses: 54,425

Average Burden Per Response: 30 minutes

Annual Burden Hours: 27,213

Needs and Uses: The DD Form 149 allows an applicant to request correction on a military record. It provides active servicemembers and former service personnel who feel they have suffered an injustice as a result of their military service and wishes to file an appeal with a method of doing so.

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: May 13, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–11848 Filed 5–18–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Technology Conversion, Reinvestment and Transition Assistance

AGENCY: Advanced Research Projects Agency, DOD.

ACTION: Joint program solicitation.

SUMMARY: The Advanced Research Projects Agency (ARPA) of the Department of Defense, the Department of Commerce's National Institute of Standards and Technology (NIST), the Department of Energy (DOE), the National Science Foundation (NSF), and the National Aeronautics and Space Administration (NASA), are collaborating in the Technology Reinvestment Project (TRP) to execute eight statutory Programs authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, and other legislation. The Defense Technology Conversion Council (DTCC), chaired by ARPA, administers the TRP, which is conducting the solicitation of proposals.

On March 10, 1993, the TRP published the "Program Information Package for Defense Technology Conversion, Reinvestment, and Transition Assistance." That Program Information Package, referred to below as the "PIP," describes the statutory Programs in some detail. If you do not already have a copy of the PIP, you should request one immediately. A compilation of typical questions and answers are also available. Requests for the PIP and questions and answers may be made in any of the following ways:

Phone: 1–800–DUAL USE (1–800–382–5873), Monday through Friday from 8 a.m. to 7 p.m., eastern daylight savings time.

Fax: (703) 461–2372, addressed to: Technology Reinvestment Project, PA#93–21. This fax number was misprinted in some early editions of the PIP.

Electronic Mail: Internet address: pa93–21@darpa.mil.

If you have already requested and received a copy of the PIP using any of these three means, copies of this solicitation, the TRP cover sheets referred to below, and typical questions and answers will be mailed to you without further action on your part on or about the date of publication of this solicitation in the Commerce Business Daily.

Throughout this notice the term *Program* refers to one of the eight statutory programs included in the TRP. Descriptions of each Program and its specific requirements *for cost sharing and participation* are contained in each Program's specific statute and *discussed* in the PIP. The term *Activity* refers to specific proposed efforts and tasks that respond to a formal solicitation. The PIP defines all Activities and describes them in considerable detail. Activities are grouped into three Activity Areas: Technology Development, Technology Deployment, and Manufacturing Education and Training. Criteria for selection for each Activity Area are shown in Appendix A of the PIP and apply to all proposed Activities in that Activity Area. Except for one Program (Regional Technology Alliances Assistance Program), each Program will fund Activities in only one Activity Area.

All proposals will be evaluated collectively by representatives of the TRP agencies. There is no requirement that any agency be involved in the development of any proposal, nor is there any advantage to be gained by "affiliating" a proposal with any particular agency.

As noted in section 7.3 below, the amount of funding available for the Manufacturing Extension Service Providers Activity has been increased by the addition of funds from the NIST State Technology Extension Program.

1. Relationship of This Notice to the PIP

This notice is the formal solicitation of proposals referred to in the PIP. It contains specific additions, corrections, and modifications to the PIP. This notice takes precedence over the PIP in any instance of conflict between the two. In particular the information in Chapter 3 of the PIP relating to proposal format and submission is expressly superseded by this notice.

The PIP contains a large amount of valuable information that you should refer to as you assemble a proposal for any of the TRP Programs. This information includes examples of projects that can guide you in structuring your own proposal, reproductions of statutory language, descriptions of Technology Focus Areas, and descriptions of Activities.

The PIP, as modified by this notice, constitutes an informational supplement to this notice.

Notice: Proposers are expressly charged with the responsibility to be fully informed of the contents of the PIP as well as of this notice.

Although the PIP bears printed legends indicating that it is "not a solicitation," those legends should be disregarded.

Both this notice and the PIP are subordinate to the statutory requirements for the Programs. Any perceived discrepancy between a statute and this notice should be brought to the attention of the TRP for clarification.

A separate, complementary Small Business Innovative Research (SBIR) solicitation is being issued concurrently with this solicitation and will be mailed to firms on the Small Business Administration's SBIR mailing list. You may request a copy of the SBIR solicitation in the same way as you request a copy of the PIP.

2. Notice of Government Rights Reserved

1. The Government reserves the right to negotiate the scope of work and corresponding project award amount; for example, to delete a task or tasks deemed not to be of interest to the Government for any reason.

2. The Government reserves the right, in all cases, to negotiate with proposers funding from Federal sources other than the TRP Programs.

3. The Government reserves the right, in all cases, to move any proposal from one Activity and/or Program to another within the same Activity Area for which the proposal meets all statutory requirements. Any such changes will occur after evaluation and before award.

4. The Government reserves the right to negotiate partial funding of any proposal.

5. The Government assumes no obligation to award all Program funds in this competition.

6. The Government assumes no obligation for continuation or follow-on funding of winning proposals.

3. TRP Statutory Programs

The following Programs are being competed under this solicitation. Descriptions of each Program and the statutes that created them are in the PIP.

- Defense Dual-Use Critical Technology Partnerships (10 U.S.C. 2511)
- Commercial-Military Integration Partnerships (10 U.S.C. 2512)
- Regional Technology Alliances Assistance Program (10 U.S.C. 2513)
- Defense Advanced Manufacturing Technology Partnerships (10 U.S.C. 2522)
- Manufacturing Extension Programs (10 U.S.C. 2523)
- Defense Dual-Use Assistance Extension Program (10 U.S.C. 2524)

• Manufacturing Engineering Education (10 U.S.C. 2196)
• Manufacturing Experts in the Classroom (10 U.S.C. 2197)

4. Aligning Activities with Statutory Programs

Each proposal must combine a single proposed Activity with a single statutory Program as a funding source. Section 2.3 of the PIP provides instructions for aligning proposal Activities with statutory Programs. Each Activity Area has associated selection criteria (set out in appendix A of the PIP) that apply to all Activities and Programs grouped in that Activity Area; each statutory Program has particular requirements (set out in appendix B of the PIP).

Proposers who wish to link multiple Activities to provide an integrated solution for technology reinvestment will find guidelines for developing "associated proposals" below.

5. Considerations of Program Coherence

It is the intention of the TRP that the awards made under this solicitation shall create to as great a degree as possible a coherent program of technology reinvestment across Activity Areas, Technology Focus Areas, executing agencies, and otherwise. Accordingly, considerations of program coherence will be applied in the determination of funding of proposals after evaluations have been made based on the selection criteria set forth in the PIP.

The TRP is a goal-driven, rather than rule-driven, program. Therefore, proposers are strongly encouraged to base their proposals on good ideas and what they want to do to implement them; proposers are discouraged from trying to "game" the constraints of the Programs, such as participant eligibility and cost sharing. While all statutory requirements must be adhered to in awards, the substance of what you propose will be the primary determinant of whether your proposal is selected. Careful maneuvering through the statutory requirements that harms the substance of your proposal when tested against the selection criteria is unwise. Moreover, given the complexity of the Programs, the TRP will not simply discard well-thought-out proposals because of perceived minor technical variances from the provisions of this solicitation. Strong proposals with such variances from non-statutory requirements may still be selected for award, with those variances resolved during negotiations between the government and the offerors.

6. Proposal Preparation and Submission Instructions

All proposals must be in the format given below. A complete proposal consists of all required TRP cover sheets (as described below), a technical proposal (which includes business plan—that is, the plan for getting technology out of the laboratory and into products and processes—and project management information), and a cost proposal. Technical proposals and cost proposals may be in separate volumes, or they may be submitted in a single volume, at the option of the proposer. If separate volumes are submitted, however, they must be submitted together in a single package. Submit twelve (12) numbered copies of each complete proposal. The technical proposal and the cost proposal shall each have their own consecutive page numbers. Proposals must be permanently bound by staple in the upper left-hand corner.

Proposal volumes must be signed by authorized representatives of all participants, including, in particular, all statutorily required entities.

6.1 Instructions for Delivery of Proposals

The deadline for receipt of proposals in response to this notice is July 23, 1993, at 4 p.m. eastern daylight savings time. Proposals must be received at: Technology Reinvestment Project, 3701 North Fairfax Drive, Arlington, VA 22203–1714.

Proposals and proposal modifications (which will only be accepted prior to the deadline for receipt of proposals) shall be submitted in sealed envelopes or packages addressed to the address shown above and shall have the following information on the outer envelope or wrapping:

1. Offeror's name and return address.
2. The proposal receipt address above.
3. Joint Program Solicitation No: SOL 93–29.
4. Hour and date due: 4 p.m. e.d.t., July 23, 1993.

Hand-carried proposals must be delivered to the ARPA Visitor Control Office on the first floor at the above address. Document receipts will be available upon request. Proposals submitted by telegraph or facsimile will not be accepted. Proposals may be modified only by written notice.

No proposal or modification received after the stated date and time will be considered unless it is received prior to any award being made under this solicitation and:

• It was sent by registered or certified mail on or before July 16, 1993 or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee on or before 4 p.m. at the address of mailing on July 21, 1993, or
• It was sent by mail and its late receipt is determined by the TRP to be due solely to mishandling by the Government after receipt at the address above.

The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by Express, registered, or certified mail is the U.S. Postal Service postmark both on the envelope or wrapper and on the original receipt. Both postmarks must show a legible date or the proposal shall be processed as if mailed late.

Submit:

1. With each copy of a technical proposal, a completed TRP Cover Sheet 1 as the cover, with completed TRP Cover Sheet(s) 2 behind TRP Cover Sheet 1;
2. For associated proposals (see Section 6.6, below), with each copy of the technical proposal, completed TRP Cover Sheets 3a and 3b behind TRP Cover Sheet 2;
3. A self-addressed, stamped post card, with the proposal title, for acknowledgment of receipt of the proposal (the TRP will not respond to inquiries regarding the status of proposals).

6.2 Information to be Included on TRP Cover Sheets

While no particular form for the information on TRP Cover Sheets is required, preprinted forms are available from the TRP. You can request these by phone, fax, or electronic mail, as described above for obtaining copies of the PIP. Failure to use these preprinted forms may delay consideration of your proposal. You may request these forms by telephone, fax, or electronic mail in the manner described above for obtaining copies of the PIP.

TRP Cover Sheet 1 must contain the following information in the following order: Proposal title; Activity; Program; Technology Focus Area and specific topic (if proposal represents a Technology Development Activity); point of contact name, mailing address, telephone number, fax number (if any), electronic mail address (if any), and type of business; names of key personnel, their organizations, and the percentage of their time to be committed to the proposed tasks; names of key organizations participating; TRP-funded cost information including base period cost and duration, first option period cost and duration, second option period cost and duration, and percentage that TRP funding represents of the total cost of activities; specific information about

matching funds during the base performance period, including amount of cash, amount of in-kind, type(s) of in-kind, and total matching funds. Indicate on this cover sheet whether your proposal involves the participation of foreign-owned organizations. Also identify, if any, each Federal agency that was instrumental in formulating the proposal idea, team, or approach. (There is no requirement that any agency be involved in the development of any proposal.) Finally, provide an abstract of your proposal of not more than 200 words.

TRP Cover Sheet 2 must contain the following information for each organization participating in the proposal: name and address; telephone number; fax number (if any); point of contact name, organization, and address; electronic mail address (if any); type of business. Also, indicate for each participant if it is a small business, an HBCU or MI (see Section G.4 of the PIP), or a foreign-owned organization. Use as many pages as necessary to list all participating organizations.

TRP Cover Sheets 3a and 3b are used only for associated proposals (see below). Cover Sheet 3a must contain the following information: title for the set of associated proposals; point of contact name, address, telephone number, fax number (if any), and electronic mail address (if any); titles of all associated proposals; a list or other depiction of ALL of the Activity/Program pairs addressed by proposals included in the set of associated proposals. Cover Sheet 3b must contain the associated proposal set title and a narrative of not more than five (5) pages describing how the set of associated proposals forms a coherent whole.

If separately bound technical and cost proposals are submitted, separate TRP Cover Sheets 1 and 2 must be provided for both the cost proposal and the technical proposal. Include TRP Cover Sheets 3a and 3b for both the cost proposal and the technical proposal if associated proposals are submitted.

Note: TRP Cover Sheets do not count as pages of either the technical proposal or the cost proposal. Extraneous writing on Cover Sheets will be ignored by evaluators.

6.3 Technical Proposal Format

Technical proposals will be a maximum of thirty-five (35) pages long. Material appearing after the thirty-fifth page will not be considered. The only required organization is that the following four sections appear:

Section 1—Executive Summary: The technical proposal must begin with an executive summary of not more than five (5) pages, summarizing the entire technical proposal, including business plan and management plan. Because this executive summary will be generally evaluated on its merits against the selection criteria before the remainder of the technical proposal is reviewed, proposals may be eliminated from further consideration based solely on the executive summary.

Section 2—Body of the Proposal: The body of the proposal must give a detailed explanation of the technical approach, business plan (including benefits to be derived from the proposed activities), and the management plan.

Section 3—Statement of Work: Supply a brief Statement of Work that discusses the specific tasks to be carried out, including a schedule of significant events and measurable milestones.

Section 4—Selection Criteria Index: Include an index that shows the pages of the proposal on which each of the selection criteria is addressed.

6.4 Technical Proposal Page Layout

The technical proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page (where a page is 8½ by 11 inches with type no smaller than 12 point and margins of at least 1" top, 1" bottom, 1" left-side, and 1" right-side).

6.5 Cost Proposal Format

Cost proposals will have no page length limit or page layout requirements and must address funding over the term of award specified for the Activity Area at which the proposal is directed (see the appropriate portion of Appendix A of the PIP). Work Breakdown Schedules will not be required. Information that should appropriately be included only in the technical proposal must not be included in the cost proposal and will, if included there, be ignored. Cost proposals shall be organized to include the following three sections, in the order shown:

Section 1—Total Proposed Cost: This section must give a detailed breakdown of costs on a task-by-task basis for each task appearing in the Statement of Work.

Section 2—Cost to the Government: This section must specify the total costs to be supported using TRP funds (funds provided through a financial instrument awarded under this solicitation). Any technical efforts or other assistance including funds, equipment, facilities, or personnel of Federal laboratories required to support these activities should be treated as described below in Section 7.1 of this solicitation.

Section 3—Fund Matching and In-Kind Contributions: This section shall include: (1) the sources of cash and amounts to be used for matching requirements, (2) the specific in-kind contributions proposed, their value in monetary terms, and the methods by which their values were derived, and (3) evidence of matching fund availability. Proposers should include sufficient information to allow the quality of matching contributions to be expeditiously evaluated.

6.6 Associated Proposals

In some cases a proposer may have multiple ideas that span several Activities, Activity Areas, or Programs. In such a case, the proposer must prepare a separate proposal for each Activity/Program combination and then submit those separate proposals in a single package, using TRP Cover Sheets 3a and 3b to list all proposals included in the set of associated proposals and to describe how those separate proposals form a coherent whole.

Note that associated proposals present a different situation from that in which a proposer wishes to submit a single proposal idea to multiple Activity/Program combinations. In such a case, each proposal shall be submitted separately, and TRP Cover Sheets 3a and 3b are not required. The submission of such multiple identical proposals is discouraged and each such proposal must bear a clear indication that it is part of a set of such multiple proposals.

7. Further Additions and Corrections to the Program Information Package

7.1 Additional Information About Matching Funds Requirements

The PIP describes the matching funds requirements applicable to all eight TRP Programs in a general way and recommends that potential offerors refer to the language of the individual statutes for detailed information. This section of the solicitation provides some clarification of matching requirements related to (1) Federal funds other than TRP funds and to (2) Federal technical assistance. The "Proposed Matching Regulation For Commercial-Military Integration Partnerships" set forth in section G.3 of the PIP should be considered incorporated by reference into the TRP cost sharing policies set forth in section G.2 of the PIP.

Note: Section III(a)(2) on page G–2 of the PIP is misleading and should be disregarded. Federal "in-kind contributions" are included in the term technical assistance.

In applying matching funds requirements, the TRP intends to be as flexible as possible in the treatment of contributions of other Federal Government entities within the specific requirements of the Program statutes as described below.

Technology Development

In general, proposers are expected to use non-Federal resources to meet cost sharing requirements. Under Commercial-Military Integration Partnerships, non-DoD Federal Funds and non-DoD Federal technical assistance may be used to match TRP funds. However, proposers should be aware that substantial dependence on Federal funds or technical assistance to meet cost sharing requirements may reduce the attractiveness of their proposals in the areas of pervasive impact and commitment to productization.

Technology Deployment

In most cases, proposers are expected to use non-Federal resources to meet cost sharing requirements. Under the Defense Dual-Use Extension Assistance Program, non-DoD Federal Funds and non-DoD Federal technical assistance may be used to match TRP funds. However, to successfully meet the Technology Deployment selection criteria, a proposer must show that it is in the National interest to use Federal funds and technical assistance because no appropriate source of non-Federal funds or assistance is available.

Manufacturing Education and Training

In general, proposers are expected to use non-Federal resources to meet cost sharing requirements. Under both Programs in this Activity Area, non-TRP funding and technical assistance from all sources, including Federal Government entities, may be used to match TRP funds. However, proposers should be aware that substantial dependence on Federal funds or technical assistance to meet cost sharing requirements may reduce the attractiveness of their proposals in the areas of resources and industry involvement.

Additional Clarification and Guidance

Other than as described above, proposers should not include the use of non-TRP Federal funds or Federal technical assistance in the cost structure of their proposals. Rather, the impact of those Federal funds or technical efforts at Federal laboratories which strengthen a proposal should be discussed as related technical support in the technical proposal. In this way, the Federal funds or technical efforts can be considered neutral with respect to matching requirements, avoiding unnecessarily recognizing Federal activities as part of the transaction and thereby increasing the costs which industry must match. These federal funds and technical efforts then need not be matched by non-Federal Government participants, nor may they be used to match TRP funds.

The foregoing discussion states general guidance. The language of the particular Program statute under which an award is made and negotiated will definitively determine matching requirements. The TRP will assure that all statutory requirements relating to matching funds are ultimately complied with in the financial instrument.

7.2 Additional Information Concerning Manufacturing Education and Training Activities

Manufacturing Engineering Education Coalitions

The funding of additional two-year renewals will be dependent upon both demonstrated progress and the availability of funds.

Supplementary Education Awards to Ongoing Centers and Coalitions Devoted to Manufacturing

The maximum award shall be $2.5 million, not $600,000 as stated in Section A.3.7 of the PIP.

Manufacturing Experts in the Classroom

The following description of this additional Manufacturing Education and Training Activity should have been included as Section A.3.9 of the PIP.

The main objective of this Activity is to impart the profound knowledge and years of experience possessed by many of American industry's manufacturing experts and production engineers to the next generation of engineers. These experts could greatly enrich the academic programs and the students' educational experience by being engaged in team teaching with existing faculty and developing and managing practice-oriented laboratories. Other innovations are also encouraged. For example, the impact of this thrust can be greatly expanded by interactive video classroom technology.

Manufacturing experts' activities can be included as an integral part of those in the eight Activities enumerated in the PIP for the Manufacturing Education and Training Activity Area or proposed as separate stand-alone projects. In the latter case, it is anticipated that three-year awards will be made for a total of up to $600,000 each. Industry is expected to match the annual level of the award by the end of each year. This matching can include funds, compensated personnel time, the use of facilities, contributed equipment and supplies, etc. No renewals are anticipated at this time.

7.3 Additional Funding for the Manufacturing Extension Service Providers Activity

The amount of funding available for the Manufacturing Extension Service Providers Activity has been increased to $87.9 million from the $87.4 million stated in the PIP. This increase was made possible by the addition of $500,000 of funds from NIST's State Technology Extension Program (STEP). All proposals in this Activity should still be aligned with Manufacturing Extension Programs, as specified in the PIP. Proposals that fit into the STEP program's goals of support for state industrial extension programs will be identified during the evaluation process for potential funding from this additional source.

7.4 Historically Black Colleges and Universities (HBCU), Minority Institutions (MI), and Small Business

The following material replaces in its entirety section G.4 of the PIP.

G.4 Historically Black Colleges and Universities (HBCU), Minority Institutions (MI), and Small Business

An important component of the Technology Reinvestment Project is providing an opportunity for various institutions to forge new relationships and engage in collaboration to their mutual advantage. Small Businesses play an important role in the Defense and commercial industrial base. They are specifically the targeted beneficiary class in the Technology Deployment Activity Area and are exclusively eligible to participate in the SBIR portion of the TRP.

HBCUs and MIs are encouraged to participate in all programs for which they are eligible to participate. In cases where the evaluation of proposals is substantially equal, preference for award will be given to those proposals that include HBCUs and MIs as participants over those that do not include HBCUs and MIs.

Small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) as well as small business concerns owned and controlled by women are encouraged to participate in all programs for which they are eligible to participate. For the Technology Development Activity Area, in cases

where the evaluation of proposals is substantially equal, preference for award will be given to those proposals that include SDBs as participants over those that do not include SDBs.

Dated: May 14, 1993

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–11851 Filed 5–18–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Government-Industry Technical Data Committee; Meetings

AGENCY: Office of The Under Secretary of Defense (Acquisition) DOD.

ACTION: Notice of cancellation.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee was formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee meetings scheduled for May 19 and 20, 1993, (**Federal Register** Notice, December 28, 1992, page 61597) are hereby cancelled. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: May 14, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–11914 Filed 5–17–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Privacy Act of 1974; Adding Systems of Records.

AGENCY: Department of the Air Force, DOD.

ACTION: Adding systems of records.

SUMMARY: The Department of the Air Force proposes to add two systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The new systems will be effective June 18, 1993, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, SAF/AAIA, 1610 Air Force Pentagon, Washington DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

New records systems reports, as required by the Privacy Act of 1974 (5 U.S.C. 552a(r)), as amended, were submitted on May 5, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b(3) of Appendix I to OMB Circular A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 24, 1985 (50 FR 52738, December 24, 1985).

Dated: May 11, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F055 ACC A

SYSTEM NAME:

Air-to-Air Weapon System Evaluation Program.

SYSTEM LOCATION:

83d Fighter Weapons Squadron, Analysis Division, Building 1801, 1287 Florida Avenue, Tyndall AFB, FL 32403–5217.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Fighter and attack aircrew members who have live-fired missiles in the Air-to-Air Weapon System Evaluation Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, unit of assignment, and flying experience information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Powers and Duties, delegation by; as implemented by Air Force Regulation 55–11, Programming of Requirements and Reporting Expenditures for Missile/Targets in Noncombat Firing Programs, and E.O. 9397.

PURPOSE(S):

Used to measure program goals that dictate maximizing aircrew participation during their first fighter assignment tour. Personal data is also used to determine the effects of experience and training on air-to-air weapons employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, safes and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Paper records are retained for one year after data is entered in computer then destroyed by tearing into pieces, shredding, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

83d Fighter Weapons Squadron, Analysis Division, Building 1801, 1287 Florida Avenue, Tyndall AFB, FL 32403–5217.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to 83d Fighter Weapons Squadron, Analysis Division, Building 1801, 1287 Florida Avenue, Tyndall AFB, FL 32403–5217.

When appearing in person a military identification card is required for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to 83d Fighter Weapons Squadron, Analysis Division, Building 1801, 1287 Florida Avenue, Tyndall AFB, FL 32403–5217.

When appearing in person a military identification card is required for positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information for this system is obtained from forms completed by aircrew members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F215 AFMWRSA A

SYSTEM NAME:

Automated Air Force Library Information System.

SYSTEM LOCATION:

At all Air Force bases, stations, laboratories, and centers operating automated library systems. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel and dependents; civilian personnel (including contractors) and dependents who are authorized to use Air Force libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social security number, library card number, name, base and/or home address, privilege code, statistical code, base organizational affiliation code, telephone number(s), expiration date, registration date, issuing library, number of cards issued, service code (if appropriate), and graduate school code (if appropriate) for special borrowers; on-line patron registration which may include at some locations security clearance level/special accesses; need-to-know subject areas, and citizenship.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties, delegation by, as implemented Air Force Regulation 215–15, Air Force Library and Information System, and E.O. 9397.

PURPOSE(S):

This system is used to track accountability of materials charged via operation of the library's automated circulation control system; to follow up on delinquent borrowers by generation of overdue notices, to clear departing patrons and delete their names from the file, to issue library cards, and to ensure proper control of classified and limited distribution material.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer and computer output products, and on paper application forms.

RETRIEVABILITY:

Social Security Number, name, library card number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are destroyed when expended, when material is returned, on consolidation of records, or on other proper settlement of responsibility. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Morale, Welfare, Recreation and Services Agency, Library Services Division, Randolph AFB, TX 78150–4534.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Air Force Morale, Welfare, Recreation and Services Agency, Library Services Division, Randolph AFB, TX 78150–4534, or to library officials at location of assignment.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Air Force Morale, Welfare, Recreation and Services Agency, Randolph AFB, TX 78150–4534, or to library officials at location of assignment.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal information obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–11849 Filed 5–18–93; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Privacy Act of 1974; Amend System of Records

AGENCY: Department of the Army, DOD.

ACTION: Amend system of records.

SUMMARY: The Department of the Army is amending one system of records notices in its existing inventory of records system subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 18, 1993, unless comments are received which result in a contrary determination.

ADDRESSES: U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, in their entirety. The proposed amendments are not within the purview of the provision of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system reports.

Dated: May 12, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–66bDASG

SYSTEM NAME:

Health Care and Medical Treatment Record System, *(February 22, 1993, 58 FR 10063).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'a blood smear that can be used for DNA typing to identify human remains;' before 'and procurement and separation x-ray record files.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301; 10 U.S.C. 1071–1085; 50 U.S.C. Supplement IV, Appendix 454, as amended; E.O. 9397; and Department of Defense Instruction 6010.15, Third Party Collection (TPC) Program; DoD Directive 6010.14, Inpatient Medical Care for Foreign Military Personnel; and Army Regulation 40–57, Armed Forces Medical Examiner System.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Second paragraph, add 'Armed Forces Institute of Pathology,' after 'National Institutes of Health,'.

Add a new paragraph 'Third party payers per 10 U.S.C. 1095 as amended by Pub. L. 99–272, and guidance provided to the DoD health services by DoD Instruction 6010.15, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.'

* * * * *

A0040–66bDASG

SYSTEM NAME:

Health Care and Medical Treatment Record System.

SYSTEM LOCATION:

Army Medical Department facilities and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces (both active and inactive); dependents; civilian employees of the Department of Defense; members of the U.S. Coast Guard, Public Health Service, and Coast and Geodetic Survey; cadets and midshipmen of the military academies; employees of the American National Red Cross; and other categories of individuals who receive medical treatment at Army Medical Department facilities/activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, medical records (of a permanent nature) used to document health; psychological and mental hygiene consultation and evaluation; medical/dental care and treatment for any health or medical condition provided an eligible individual on an inpatient and/or outpatient status to include but not limited to: Health; clinical (inpatient); outpatient; dental; consultation; a blood smear that can be used for DNA typing to identify human remains; and procurement and separation x-ray record files.

Subsidiary medical records (of a temporary nature) are also maintained to support records relating to treatment/observation of individuals. Such records include but are not limited to: Social work case files, inquiries/complaints about medical treatment or services rendered by the medical treatment facility, and patient treatment x-ray and index files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1071–1085; 50 U.S.C. Supplement IV, Appendix 454, as amended; E.O. 9397; and Department of Defense Instruction 6010.15, Third Party Collection (TPC) Program; DoD Directive 6010.14, Inpatient Medical Care for Foreign Military Personnel; and Army Regulation 40–57, Armed Forces Medical Examiner System.

PURPOSE(S):

To provide health care and medical treatment of individuals; to establish tuberculosis/tumor/cancer registries; for research studies; compilation of statistical data and management reports; to implement preventive medicine, dentistry, and communicable disease control programs; to adjudicate claims and determining benefits; to evaluate care rendered; determine professional certification and hospital accreditation; and determine suitability of persons for service or assignment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Veteran Affairs to adjudicate veterans' claims and provide medical care to Army members.

National Research Council, National Academy of Sciences, National Institutes of Health, Armed Forces Institute of Pathology, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be eliminated from records used for research studies. Facilities/activities releasing such records shall maintain a list of all such research organizations and an accounting disclosure of records released thereto.

To local and state government and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety, child abuse, and other public health and welfare programs.

Third party payers per 10 U.S.C. 1095 as amended by Pub. L. 99–272, and guidance provided to the DoD health services by DoD Instruction 6010.15, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.

NOTE: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the united States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; visible card files; microfiche; cassettes; punched cards; magnetic tapes/discs; computer printouts; x-ray film preservers.

RETRIEVABILITY:

By patient or sponsor's surname or sponsor's Social Security Number.

SAFEGUARDS:

Records are maintained in buildings which employ security guards and are accessed only by authorized personnel having an official need-to-know. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Military health/dental and procurement/separation x-ray records are permanent. Clinical (inpatient), outpatient, dental and consultation record files for military members are destroyed after 50 years; records

pertaining to U.S. Military Academy cadets are withdrawn and retired to the Surgeon, U.S. Military Academy, West Point, NY 10996–1797. Records on civilians and foreign nationals are destroyed after 25 years. Records on American Red Cross personnel are withdrawn and forwarded to the American National Red Cross.

All medical records (except the Military Health/Dental records which are active while individual is on active duty, then retired with individual's Military Personnel Records Jacket and the procurement/separation x-ray records which are forwarded to the National Personnel Records Center on an accumulation basis) are retained in an active file while treatment is provided and subsequently held for a period of 1 to 5 years following treatment before being retired to the National Personnel Records Center. Subsidiary medical records, of a temporary nature, are normally not retained long beyond termination of treatment; however, supporting documents determined to have significant documentation value to patient care and treatment are incorporated into the appropriate permanent record file.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the medical facility where treatment was provided. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Red Cross employees may write to the Medical Officer, American National Red Cross, 1730 E Street, NW, Washington, DC 20006.

For verification purposes, the individual should provide the full name, Social Security Number of sponsor, and current address and telephone number. Inquiry should include name of the hospital, year of treatment and any details which will assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the medical facility where treatment was provided. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Red Cross employees may write to the Medical Officer, American National Red Cross, 1730 E Street, NW, Washington, DC 20006.

For verification purposes, the individual should provide the full name, Social Security Number of sponsor, and current address and telephone number. Inquiry should include name of the hospital, year of treatment and any details which will assist in locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject individual, personal interviews and history statements from the individuals; abstracts or copies of pertinent medical records; examination records of intelligence, personality, achievement, and aptitude; reports from attending and previous physicians and other medical personnel regarding results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies and research conducted to provide health care and medical treatment; and similar or related documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–11850 Filed 5–18–93; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 3218–032, et al.]

Hydroelectric Applications [City of Orrville, CA, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Surrender of License.

b. *Project No.:* 3218–032.

c. *Date Filed:* April 19, 1993.

d. *Applicant:* City of Orrville, Ohio.

e. *Name of Project:* Pike Island Hydroelectric Project.

f. *Location:* Pike Island Locks and Dam on the Ohio River, at Tiltonsville, Ohio.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert A. Nichols, Director of Utilities, Department of Public Utilities, 207 North Main Street, Orrville, OH 44667. (216) 684–5000

i. *FERC Contact:* Hank Ecton (202) 219–2678.

j. *Comment Date:* June 21, 1993.

k. *Description of Project Action:* The license for this project, with a proposed capacity of 49.5 megawatts, was issued on September 27, 1989. The proposed project was to utilize an existing U.S. Corps of Engineers Pike Island Dam. The licensee states that he has not been able to secure the necessary agreements to allow the development of the project. No construction has occurred, and the proposed site remains unaltered.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C1, and D2.

2a. *Type of Application:* Surrender of Exemption (5MW or Less).

b. *Project No.:* 7466–001.

c. *Date Filed:* April 13, 1993.

d. *Applicant:* Ms. Gail M. Cron.

e. *Name of Project:* Hamon Canyon.

f. *Location:* On Hamlin Canyon Creek in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Gail M. Cron, 530 Hillcrest Road, Paradise, CA 95969. (916) 877–1689

i. *FERC Contact:* Mark R. Hooper, (202) 219–2680.

j. *Comment Date:* June 21, 1993.

k. *Description of Proposed Action:* The existing project for which the exemption is being surrendered consists of: (1) A 5-foot-wide, 5-foot-long, and 3-foot-high intake structure at elevation 1,540 feet msl; (2) a 12-inch-diameter, 180-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 5 kW; and (4) a 108-foot-long transmission line.

The exemptee is requesting surrender of its exemption for personal reasons. The project is presently not in operation.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C1, and D2.

3a. *Type of Application:* Amendment to Project Design.

b. *Project No:* 10552–005.

c. *Date Filed:* 03/26/93.

d. *Applicant:* Contractors Power Group, Inc.

e. *Name of Project:* Mi-28 Water Power Project.

f. *Location:* On the Milner-Gooding Canal, near the City of Eden in Jerome County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John J. Straubhar, P.E., P.O. Box 820, Twin Falls, ID 83303–0820. (208) 736–8255

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* June 21, 1993.

k. *Description of Amendment:* In addition to a change from the two inclined Kaplan turbines, approved under the license, to two vertical reaction turbines of the same capacity, Licensee proposes to reroute the transmission line. The new proposed transmission line alignment will be South and East of the proposed powerplant, to the point of interconnection with Idaho Power Company. This proposed alignment would affect federal and private lands.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C1, and D2.

4a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 11365–000.

c. *Date Filed:* December 2, 1992.

d. *Applicant:* Swan Falls Corporation.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* On the Saco River in Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, Maine 04082–0040. (207) 892–4000

i. *FERC Contact:* Mary C. Golato, (202) 219–2804.

j. *Deadline Date:* July 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project consists of the following features: (1) An existing dam approximately 630 feet long and 10 feet high; (2) an existing impoundment with a surface area of 150 acres, a length of 4.1 miles, and a storage capacity of 450 acre-feet; (3) an existing powerhouse containing one operable and one inoperable turbine generator unit (both to be upgraded), thus increasing the installed capacity of the project from 350 to 820 kilovolt; (4) an existing 34.5-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4 million kilowatthours.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This Notice Also Consists of the Following Standard Paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, ME 04082–0040 (207) 892–4000.

5a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2421–003.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Flambeau Paper Corporation.

e. *Name of Project:* Lower Hydro Project.

f. *Location:* On the North Fork of the Flambeau River in Price and Ashland Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James M. McGinnity, Vice President, Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552. (715) 762–3231.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (July 6, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earth dikes, the first (the "left dike") extends 80 feet and the second (the "right dike") extends 64 feet, each consisting of a sand, gravel and silt mixture with a central concrete corewall; (2) an existing concrete gravity ogee spillway section, approximately 102 feet long, containing four tainter gates, each 20.1 feet long by 13 feet high; (3) an existing concrete log sluice; (4) an existing reservoir with a surface area of approximately 71 acres and a total storage volume of approximately 570 acre-feet at the normal surface elevation of 1468.0 feet NGVD; (5) an existing reinforced concrete and brick powerhouse, 93 feet long by 52 feet wide, containing (a) three vertical AVB turbines with a combined plant hydraulic capacity of 930 cfs, manufactured by Allis Chalmers and rated at 600 hp each, and (b) three generators, manufactured by Allis Chalmers and rated at 400 kW each, providing a total plant rating of 1,200 kW; and (6) existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 5,920 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This Notice also Consists of the Following Standard Paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552 or by calling (715) 762–3231.

6a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2473–002.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Flambeau Paper Corporation.

e. *Name of Project:* Crowley Hydro Project.

f. *Location:* On the North Fork of the Flambeau River in Price County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James M. McGinnity, Vice President, Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552. (715) 762–3231.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (July 6, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earth embankments, the first (the "left embankment") extends approximately 133 feet and the second (the "right embankment") extends approximately 255 feet, each embankment contains a reinforced concrete corewall; (2) an existing concrete gated ogee spillway section, approximately 71 feet long, containing (a) two tainter gates, each 20.1 feet long by 12 feet high, (b) two stoplog gates, each 9 feet long by 13 feet high, (c) two submerged sluice gates located under the stoplog gates, each 4 feet long by 4

feet high, and (d) a concrete apron on the downstream side; (3) an existing reservoir with a surface area of 422 acres and a net storage capacity of 3,539 acre-feet at the normal surface elevation of 1,428.0 NGVD; (4) an existing reinforced concrete and brick powerhouse, 54 feet long by 48 feet wide, containing (a) two vertical turbines with a combined hydraulic capacity of 1,480 cfs, manufactured by S. Morgan Smith and rated at 1,600 hp and 720 hp, and (b) two generators, manufactured by Allis-Chalmers and rated at 1,000 kW and 500 kW, providing a total plant rating of 1,500 kW; and (5) existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 7,423 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This Notice also Consists of the Following Standard Paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552 or by calling (715) 762–3231.

a. *Type of Application:* New Major License.

b. *Projects No.:* 2513–003.

c. *Date Filed:* December 26, 1991.

d. *Applcant:* Green Mountain Power Company.

e. *Name of Project:* Essex 19 Project.

f. *Location:* On the Winooski River, Chittenden County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr.Eugene L. Shlatz, Green Mountain Power Company, 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402. (802) 864–5731.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (July 6, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) The existing 495-foot-long, 45-foot-high concrete gravity dam comprised of (a) a 345-foot-long uncontrolled overflow spillway with 5-foot-high flashboards mounted on 261 feet of its crest and 6.5-foot-high flashboards mounted on the remaining 84 feet of its crest; (b) a 149-foot-long nonoverflow left abutment section with a crest elevation of 285.25 feet NGVD; and (c) a right nonoverflow abutment wall; (2) a reservoir with a surface area of 352 acres and a gross storage capacity of 1,950 acre-feet at the normal maximum pool elevation of 275 feet NGVD; (3) the existing intake structure; (4) four 163-foot-long, 9-foot-diameter steel penstocks that supply the main turbines; (5) two 163-foot-long, 3-foot-diameter steel penstocks that supply the hydraulic exciters; (6) the existing 156.5-foot-long by 65-foot-wide powerhouse containing four turbine-generator units rated at 1,800-kW each for a total installed capacity of 7,200-kW; (7) the existing tailrace; (8) the existing 300-foot-long, 34.5-Kv transmission line; and (9) appurtenant facilities and equipment. The applicant is not proposing any changes to the existing project works as licensed. The applicant owns all the existing project facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This Notice Also Consists of the Following Standard Paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Green Mountain Power Company, 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402, (802) 864–5731.

8a. *Type of Application:* New Major License.

b. *Project No.:* 2486–002.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* Wisconsin Electric Power Company.

e. *Name of Project:* Pine Hydro Project.

f. *Location:* On the Pine River in Florence County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Porter, Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201. (414) 221–2500.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (July 12, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) An existing earth dike, 358 feet long, containing a concrete corewall, 86 feet long; (2) an existing reinforced concrete gated spillway section, 124 feet long, containing seven Tainter gates, each 12 feet high by 14 feet long; (3) an existing concrete gravity non-overflow section, 148 feet long; (4) an existing reservoir with a surface area of 180 acres and a total storage volume of approximately 1,540 acre-feet at the normal maximum surface elevation of 1191.6 feet NGVD; (5) an existing reinforced concrete canal intake structure, 14 feet long, equipped with slots for stop logs; (6) an existing 1,530 foot long canal, approximately 10 feet deep and 12 feet wide at the bottom, cut into soil and rock, with the first 120 feet rip-rap lined and portions of the downstream end concrete lined; (7) existing penstock headworks consisting of (a) a concrete intake structure, 46 feet long, and (b) two concrete retaining walls, 47 feet long and 32 feet long; (8) two existing 9 foot diameter steel penstocks, each 340 feet long; (9) an existing reinforced concrete, brick and steel frame powerhouse, 50.6 feet long by 58.4 feet wide, containing (a) two vertical shaft Francis turbines with a combined maximum hydraulic capacity of 760 cfs, manufactured by S. Morgan Smith and rated at 3,000 hp each, and (b) two, 3-phase, 60-cycle, vertical shaft generators, manufactured by General Electric and rated at 1,800 kW each, providing a total plant rating of 3,600 kW; and (10) existing appurtenant facilities. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 18.9 GWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the Following Standard Paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at

941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Electric Power Company, 231 West Michigan, room A440, Milwaukee, WI or by calling (414) 221–2413.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11383–000.

c. *Date Filed:* February 11, 1993.

d. *Applicant:* Genesis Energies, Inc.

e. *Name of Project:* Lake Wazeecha.

f. *Location:* On Fourmile Creek in the town of Grand Rapids, Wood and Portage Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Elaine R. Hitchcock, P.O. Box 381, Sheboygan, WI 53082. (414) 458–2624.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* July 14, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An existing 23-foot-high, 1,821-foot-long dam; (2) a reservoir having a 148-acre surface area and a 1,172-acre-foot storage capacity at normal water surface elevation 1,014.4 MSL; (3) a new powerhouse containing one 200-kW generating unit; (4) a 300-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities.

The dam is owned by the Wood County Parks Department. Applicant estimates that the average annual generation would be 1,000,000 kWH and that the cost of the studies under the permit would be $20,000. Power would be sold to the Wisconsin Rapids Light and Water Works Commission.

l. *This Notice Also Consists of the Following Standard Paragraphs:* A5, A7, A9, A10, B, C and D2.

10 a. *Type of Application:* Major License.

b. *Project No.:* 10725–002.

c. *Date Filed:* May 29, 1992.

d. *Applicant:* Little Horn Energy Wyoming, Inc.

e. *Name of Project:* Dry Fork.

f. *Location:* In Bighorn National Forest, on Dry Fork in Sheridan County, Wyoming. Townships 56N, and 57N and Ranges 88W and 89W.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Bjorn Omreng, Little Horn Energy Wyoming, Inc., 100 First Stamford Place, Stamford, CT 06902.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Deadline Date for Protests and Interventions:* July 22, 1993.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The proposed project would consist of: (1) A 100-foot-high rock-fill dam creating an upper reservoir with a surface area of 73 acres and a 5,350 ac-ft storage capacity located on Dry Fork Ridge; (2) a 10,360-foot-long, 21-foot-diameter power tunnel; (3) a pumped storage powerhouse containing generating units with a capacity of 1,000 MW; (4) a 265-foot-high roller compacted concrete lower dam and reservoir with a surface area of 140 acres and a 9,622 ac-ft storage capacity on Dry Fork; (5) a lower powerhouse containing a generating unit with a capacity of 1,000 kW; (6) approximately 22 miles of improved and new access roads to the project features; (7) an 18-mile-long transmission line; and (8) appurtenant facilities.

m. *Purpose of Project:* Project power would be sold.

n. *This Notice Also Consists of the Following Standard Paragraphs:* A2, A9, B1, and D7.

11 a. *Type of Application:* Exemption of Small Conduit Hydroelectric Facility.

b. *Project No.:* 11411–000.

c. *Date Filed:* May 3, 1993.

d. *Applicant:* Metropolitan Water District of Southern California.

e. *Name of Project:* Etiwanda Small Conduit Hydroelectric Power Plant.

f. *Location:* On the existing Etiwanda Pipeline in the City of Rancho Cucamonga, San Bernardino County, California; T1S, R6W, in Section 8.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard Balcerzak, Assistant General Manager, The Metropolitan Water District of Southern California, P.O. Box 54153, Terminal Annex, Los Angeles, CA 90054, (213) 217–6000.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Brief Description of Project:* The proposed project consists a masonry powerhouse containing a turbine with an installed capacity of 23.9 Megawatts (project excludes the existing conduit on which the powerhouse is proposed).

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. In accordance with § 4.32 (b) (7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than July 2, 1993, and must serve a copy of the request on the applicant.

12 a. *Type of Application:* Major License.

b. *Project No.:* 11408–000.

c. *Date Filed:* April 28, 1993.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Salmon River Hydroelectric Project.

f. *Location:* On the Salmon River in the Towns of Redfield and Orwell, Oswego County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jerry L. Sabattis, P.E., Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* 60 days from the filing date in paragraph C. (June 28, 1993).

k. *Description of Project:* The proposed project consists of two developments progressing downstream of the Salmon River: Bennetts Bridge and Lighthouse Hill.

The Bennetts Bridge development consists of: (1) An existing dam 607 feet long and 45 feet high; (2) an existing reservoir 6 miles long; (3) an existing 10,000-foot-long conduit system; (4) an existing powerhouse containing four existing turbine-generator units with a total installed capacity of approximately 31,500 kilowatts (kW); (5) three existing 12-kilovolt (kV) electric transmission lines; and (6) appurtenant facilities.

The Lighthouse Hill development, located approximately 1 mile downstream of the Bennetts Bridge powerhouse, consists of: (1) An existing 382-foot-long concrete gravity dam; (2) an existing 4,300-foot-long reservoir; (3) three existing 17-foot-wide by 8-foot-high by 62-foot-long concrete penstocks; (4) an existing powerhouse containing two existing turbine-generator units and one proposed turbine-generator unit for a total installed capacity of 8,200 kW; (5) an existing 400-foot-long, 12-kV transmission line; and (6) appurtenant facilities. The average annual generation for both developments of the project is 108,000,000 kilowatthours. The owner of the project facilities is the Niagara Mohawk Power Corporation.

l. With this notice, we are initiating consultation with the New York State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the

regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to:

The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments,

recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescription.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (July 6, 1993 for Project Nos. 2421–003, 2473–002, and 2513–003; July 12, 1993 for Project No. 2468–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (August 19, 1993 for Project Nos. 2421–003, 2473–002; August 20, 1993 for Project No. 2513–003; August 24, 1993 for Project No. 2468–002)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: May 14, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11831 Filed 5–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–08203T, Louisiana–23]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 13, 1993.

Take notice that on May 7, 1993, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Wilcox Zone, Reservoir A, underlying portions of the South Harmony Church Field in Allen Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area covers the W/2 of Section 16 and the E/2 of Section 9, in Township 6 South, Range 5 West.

The notice of determination also contains Louisiana's findings that the referenced portions of the Upper Wilcox Zone meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11792 Filed 5–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93-08328T Oklahoma-37]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 13, 1993.

Take notice that on May 11, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-reference notice of determination pursuant to 271.703(c)(3) of the Commission's regulations, that the Morrow-Springer Common Source, underlying portions of Blaine County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as sections 7 and 17 of Township 15 North, Range 13 West and section 1 of Township 15 North, Range 14 West, Blaine County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-11793 Filed 5-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-226-000]

Columbia LNG Corp.; Technical Conference

May 13, 1993.

Take notice that on June 3, 1993, at 10 o'clock AM, the Commission Staff will convene a formal technical conference on non-environmental issues in the above-captioned proceeding to discuss issues related to the proposal by Columbia LNG Corporation (Columbia LNG) to provide storage and peaking services that involve the use of its Cove Point terminal and pipeline. Columbia LNG proposes to recommission the terminal facilities at Cove Point in order to store and vaporize LNG. Additionally, Columbia LNG will construct a liquefaction unit at Cove Point capable of liquefying up to 20,000 Mcf of gas per day to provide a peaking service. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status.

For further information contact Horatio A. Cipkus, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, room 7300-L, 825 North Capitol Street NE., Washington, DC 20426 (202) 208-2150.

Lois D. Cashell,

Secretary.

[FR Doc. 93-11794 Filed 5-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-332-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

May 13, 1993.

Take notice that on May 6, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93-332-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new point of delivery for sales service to an existing wholesale customer under Columbia's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia states that it requests authorization to construct and operate the facilities necessary to provide a new point of delivery for sales service to National Fuel Gas Supply Company (NFG) in McKean County, Pennsylvania; to serve their distribution customers, as follows:

Wholesale customer	Estimated design day delivery (Dth)	Estimated annual delivery (Dth)	Estimated construction cost
NFG	650	100,000	$78,200

It is further stated that the additional point of delivery has been requested by Columbia's existing wholesale customer to serve their distribution system customers. Columbia indicates that the quantities to be provided through the new delivery point are within Columbia's currently authorized level of sales service and would be within existing peak day entitlements of NFG. Columbia states that the sales to be made through the proposed new point of delivery would be under Columbia's currently effective Service Agreement with NFG under Rate Schedule CDS, and NFG has agreed to reimburse Columbia for the cost of the interconnection, plus any gross-up required for tax purposes.

Columbia says that it would comply with the applicable environmental requirements of § 157.206(d) of the Commission's Regulations prior to the construction of the proposed interconnecting facility.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-11796 Filed 5-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-323-000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

May 13, 1993.

Take notice that on April 30, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP93-323-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct sales taps to attach new residential customers of National Fuel Gas Distribution Corporation, under its blanket certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the National Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, National proposes to construct sales taps in Highland Township, Clarion County and Venango Township, Erie County both located in Pennsylvania.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-11795 Filed 5-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-45-000]

Natural Gas Pipeline Company of America; Conference and Extensions of Time

May 13, 1993.

Take notice that a technical conference will be convened in the captioned restructuring proceeding on June 10 and 11, 1993, at the Holiday Inn (formerly the Naperville Inn), 1801 North Naper Boulevard, Naperville, Illinois 60563 (Telephone 708-505-4900). The purpose of the technical conference is to address the issues identified by the Commission in the order issued April 22, 1993, in this proceeding. The Commission required, in Ordering Paragraph (B), that the technical conference be convened within 45 days of the order's issuance. That deadline is hereby extended to allow the technical conference to be convened on June 10 and 11, 1993. Further, the deadline for Natural to make a revised compliance filing as imposed in Ordering Paragraph (C) is extended to June 28, 1993. The technical conference will begin at 9:30 a.m. on Thursday, June 10, 1993. All interested parties are invited to attend. For further information, call John A. Myler at 202-208-0974.

Lois D. Cashell,

Secretary.

[FR Doc. 93-11791 Filed 5-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-87-002, 004 and 012]

Transwestern Pipeline Co.; Technical Conference

May 13, 1993.

Pursuant to the Commission's order issued on April 30, 1993, in the above-captioned dockets,[1] a technical conference will be convened on June 2, 1993, to discuss Natural Gas Pipeline Company of America's (Natural) concerns about Transwestern Pipeline Company's (Transwestern) proposal to apply its standard mandatory operator balancing agreement (OBA) at interconnections with other interstate pipelines.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m.

Lois D. Cashell,

Secretary.

Office of Fossil Energy

[FE Docket No. 93-44-NG]

Grand Valley Gas Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Grand Valley Gas Company blanket authorization to export to Canada up to 75 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 7, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-11875 Filed 5-18-93; 8:45 am]

BILLING CODE 6450-01-M

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[1] Transwestern Pipeline Company, 63 FERC ¶ 61,138 (1993).

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34042; FRL 4581-7]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on August 17, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent To Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the three pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before August 17, 1993 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product name	Delete from label
000192–00127	Dexol Benomyl Systemic Fungicide	Ornamentals.
001386–00626	Fruit Spray Powder	Cherries, grapes, plums.
010163–00073	Gowan Methyl Parathion 7.5	Strawberries.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company name and address
000192	Dexon Industries, 1450 W. 228th St., Torrance, CA 90501.
001386	Universal Cooperatives, Inc., 7801 Metro Parkway, P.O. Box 460, Minneapolis, MN 55440.
0163	Gowan Co., Box 5569, Yuma, AZ 85366.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: May 12, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–11872 Filed 5–18–93; 8:45 am]

BILLING CODE 6560–50–F

[PP 1G3927/T640; FRL 4583–8]

Fenoxaprop-ethyl; Extension of A Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for the combined residues of the herbicide fenoxaprop-ethyl and its metabolites in or on the raw agricultural commodity barley, grain at 0.05 part per million (ppm).

DATES: This temporary tolerance expires April 10, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–7850.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of May 27, 1992 (57 FR 22233), announcing the extension of a temporary tolerance for the combined residues of the herbicide fenoxaprop-ethyl ((±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoate and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, in or on the raw agricultural commodity barley, grain at 0.05 part per million (ppm). This tolerance was issued in response to pesticide petition (PP) 1G3927, submitted by Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 8340-EUP-13, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst Celanese Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 10, 1994. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 6, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–11869 Filed 5–18–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180894; FRL–4585–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States as listed below, one to the Guam Department of Agriculture, and 14 to the United States Department of Agriculture. There were also 10 crisis exemptions initiated by various States. These exemptions, issued during the months of April through December 1992, and January and February 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the North Carolina and Texas Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of hydrogen cyanamide on table grapes to promote uniform bud-break under conditions of inadequate winter chilling; December 16, 1992, to January 15, 1993. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of Pro-Gro (carboxin/thiram) on onion seed to control onion smut; January 12, 1993, to May 31, 1993. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of methyl bromide on watermelons to control nematodes, weeds, and soil diseases; January 12, 1993, to May 1, 1993. (Libby Pemberton)

4. California Environmental Protection Agency, for the use of hydrogen cyanamide on table grapes to promote uniform bud-break under conditions of inadequate winter chilling; December 16, 1992, to January 15, 1993. A notice published in the **Federal Register** of October 28, 1992 (57 FR 48797). A complete application for registration of this use has been received by the Agency; this use does not present a risk to human health or the environment. California has been granted similar exemptions in the past years. The State subsequently withdrew its exemption, and the Agency canceled it, effective January 15, 1993. (Andrea Beard)

5. California Environmental Protection Agency for the use of bifenthrin on broccoli, cabbage, cauliflower, head lettuce, and rapini to control the sweet potato whitefly; December 16, 1992, to April 30, 1993. California had initiated a crisis exemption for this use. (Andrea Beard)

6. Florida Department of Agriculture and Consumer Services for the use of iprodione on tobacco to control target spot (*Rhizoctonia solani*); February 10, 1993, to June 30, 1993. (Susan Stanton)

7. Georgia Department of Agriculture for the use of iprodione on tobacco seedlings to control target spot; February 1, 1993, to May 1, 1993. (Susan Stanton)

8. Guam Department of Agriculture for the use of methyl bromide on cut flowers and greenery to control western flower thrips and cabbage aphids; February 19, 1993, to February 18, 1996. (Libby Pemberton)

9. Idaho Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; February 24, 1993, to December 31, 1993. (Susan Stanton)

10. Michigan Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fire blight; February 18, 1993, to July 1, 1993. (Susan Stanton)

11. Mississippi Department of Agriculture and Commerce for the use of triclopyr on rice to control redstem and morningglory; February 10, 1993, to August 15, 1993. (Susan Stanton)

12. Montana Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; February 24, 1993, to October 15, 1993. (Susan Stanton)

13. Oregon Department of Agriculture for the use of fosetyl alumunium (Aliette) on hops to control downy mildew; February 11, 1993, to September 15, 1993. (Susan Stanton)

14. Oregon Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; February 24, 1993, to November 15, 1993. (Susan Stanton)

15. South Dakota Department of Agriculture for the use of pendimethalin on mint to control kochia and red root pigweed; April 4, to April 19, 1992. South Dakota had initiated a crisis exemption for this use. (Larry Fried)

16. Texas Department of Agriculture for the use of avermectin on bell, chili, and jalapeno peppers to control broad mites; January 27, 1993, to October 13, 1993. Texas had initiated a crisis exemption for this use. (Larry Fried)

17. Texas Department of Agriculture for the use of fenpropathrin on tomatoes to control the sweet potato whitefly; October 5, 1992, to October 5, 1993. (Andrea Beard)

18. Washington Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fire blight; February 18, 1993, to August 1, 1993. (Susan Stanton)

19. Washington Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; February 24, 1993, to November 30, 1993. (Susan Stanton)

20. EPA has granted specific exemptions to the United States Department of Agriculture for the use of the following chemicals to control quarantinably important pests throughout the United States and ports of entry; February 10, 1993, to February 9, 1996.

a. Captan on seeds and other propagative plant parts; a Rebuttable Presumption Against Registration (RPAR) has been sent to Registration Division for revisions for this chemical.

b. Phenothrin on aircraft and cargo containers.

c. Ferbam on propagative plant parts.

d. Malathion on ship decks, bulkheads, piers areas, and storage facilities.

e. Malathion/Carbaryl on orchids and other plants.

f. Metam sodium on metal surfaces contaminated with soil.

g. Methyl bromide on nonfood/nonfeed cargo, machinery, plants, and nonplant materials.

h. Methyl bromide and 2 percent chloropicrin on fallow fields and small plots of land.

i. Sodium hydroxide solution on exposed surfaces, animal product containers, hay, and straw.

j. Sodium hypochlorite on propagative plant parts and plant materials.

k. Sodium carbonate in semen containers to control animal diseases.

l. Sodium hypochlorite on surfaces potentially exposed to certain animal diseases.

m. Sodium carbonate plus sodium silicate on aircraft surfaces to control animal diseases.

n. Trifluralin on established lawns and turf to control weeds; a Rebuttable Presumption Against Registration (RPAR) has been sent to Registration Division to keep nitrosamines in technical below 0.5 part per million (ppm). (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on May 28, 1992, for the use of fomesafen on snap beans to control broadleaf weeds. This program has ended. (Larry Fried)

2. California Environmental Protection Agency on November 4, 1992, for the use of avermectin on fresh market tomatoes to control leafminers. This program has ended. (Larry Fried)

3. Georgia Department of Agriculture on February 1, 1993, for the use of chlorothalonil on leafy greens (collards, kale, mustard, and turnips) to control fungal leafspot diseases. The need for this program is expected to last until June 30, 1993. (Susan Stanton)

4. Idaho Department of Agriculture on June 12, 1992, for the use of chlorpyrifos on wheat to control the orange blossom wheat midge. This program has ended. (Andrea Beard)

5. Illinois Department of Agriculture on September 4, 1992, for the use of fomesafen on snap beans to control puncturevine. This program has ended. (Larry Fried)

6. Oregon Department of Agriculture on June 4, 1992, for the use of permethrin on raspberries to control weevils. This program has ended. (Andrea Beard)

7. South Dakota Department of Agriculture on April 4, 1992, for the use of pendimethalin on mint to control kochia and redroot pigweed. This program has ended. (Larry Fried)

8. Texas Department of Agriculture on October 14, 1992, for the use of avermectin on bell, chili, and jalapeno peppers to control broad mite. This program will end on October 13, 1993. (Larry Fried)

9. Texas Department of Agriculture on February 19, 1993, for the use of norflurazon on Burmudagrass pastures and rangeland to control crabgrass, broadleaf, and signalgrass. This program has ended. (Libby Pemberton)

10. Washington Department of Agriculture on June 2, 1992, for the use of permethrin on raspberries to control weevils. This program has ended. (Andrea Beard)

EPA has denied specific exemption requests from the:

1. North Carolina Department of Agriculture for the use of iprodione on sweet potatoes to control *Rhizopus* soft rot. (Susan Stanton)

2. Texas Department of Agriculture for the use of triadimenol on cotton seed to control black root rot. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: May 10, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–11671 Filed 5–18–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100121; FRL–4584–9]

Science Applications International Corp. and Agricultural and Priority Pollutant Laboratory; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corp. (SAIC) and its subcontractor Agricultural and Priority Pollutant Laboratory (APPL) have been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC/APPL consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable SAIC/APPL to fulfill the obligations of the contract.

DATES: SAIC/APPL will be given access to this information no sooner than May 24, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Bewanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D2–0183, SAIC/APPL will provide technical and scientific support to EPA evaluations of analytical methods and performance data for pesticide, and test analytical methods used in studies submitted to the Agency of the ecological effects, exposure, or environmental fate of pesticides.

OPP has determined that access by SAIC/APPL to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SAIC/APPL prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC/APPL is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in OPP.

All information supplied to SAIC/APPL by EPA for use in connection with this contract will be returned to EPA when SAIC/APPL have completed its work.

Dated: May 5, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–11494 Filed 5–18–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget For Review

May 14, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

Please note: The Commission has requested expedited review of these items by May 28, 1993, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: Local Franchising Authority Certification.

Form Number: FCC Form 328.

Action: New collection.

Respondents: State or local governments.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 10,525 responses; 0.5 hours average burden per response; 5,263 hours total annual burden.

Needs and Uses: On 4/1/93, the Commission adopted a Report and Order in MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation. Among other things, this Report and Order implements Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a franchise authority must file with the Commission a written certification when it seeks to regulate rates. To fulfill the obligations set forth under Section 623(a)(3) a franchise authority must: (1) Adopt regulations consistent with the Commission's regulations for basic cable service; (2) have legal authority to regulate basic service which comes from state law; (3) the personnel to administer such regulations; and (4) have procedural regulations allowing for public participation in rate regulation proceedings. FCC Form 328 provides a standardized, simple form meeting the requirements of section 623 for local franchise authorities to file a certification.

OMB Number: None.

Title: Cable Programming Service Complaint Form.

Form Number: FCC Form 329.

Action: New collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 23,000 responses; 1 hour average burden per response; 23,000 hours total annual burden.

Needs and Uses: On 4/1/93, the Commission adopted a Report and Order in MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation. Among other things, this Report and Order implements Section 3(c) of the Cable Television Consumer Protection and Competition Act of 1992. The Cable Act directs the Commission to adopt rules establishing fair and expeditious procedures for receiving, considering, and resolving complaints from any subscriber, franchising authority or other relevant state or local government entity alleging that rates for cable programming service are unreasonable. FCC Form 329 provides a simple, standardized form to be used to file a complaint with the FCC concerning a cable operator's rates for cable programming service or associated equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Instructions for FCC 328 Franchising Authority Certification

1. The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.

2. Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributors exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

3. In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.

4. A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.

5. The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date. The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.

6. In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5, which are explained as follows:

7. Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.

8. Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should file this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

A franchise authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-266, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.

9. Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.

10. Question 6: Most cable systems are not subject to effective competition, as defined by the Cable Act. (The definition is included above and on the form.) The franchising authority may presume that the cable system in its jurisdiction is not subject to effective competition.

For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscribership of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is nonbroadcast, to be found to offer "comparable" video programming.

11. This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine if the franchise authority should be authorized to regulate cable rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD-PIRS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D.C. 20503.

The foregoing notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1975, 5 U.S.C. 522a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980, 44 U.S.C. 3507.

BILLING CODE 6712-01-M

Federal Communications Commission
Washington, D.C. 20554

FCC 328

Approved by OMB
3060-XXXX
Expires 00/00/00

CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

1

Name of Franchising Authority		
Mailing Address		
City	State	ZIP Code
Telephone No. (include area code):		
Person to contact with respect to this form:		

2. a. Name (s) and address(es) of cable system(s) and associated FCC community unit identifiers within your jurisdiction. (Attach additional sheets if necessary.)

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

2. b. Name (s) of system(s) and associated community unit identifiers you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System	Community Unit Identifier

Name of System	Community Unit Identifier

2. c. Have you served a copy of this form on all parties listed in 2.b.? ☐ Yes ☐ No

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. Section 543(b)? ☐ Yes ☐ No

4. With respect to the franchising authority's regulations referred to in Question 3,

   a. Does your franchising authority have the legal authority to adopt them? ☐ Yes ☐ No

   b. Does your franchising authority have the personnel to administer them? ☐ Yes ☐ No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties? ☐ Yes ☐ No

6. The Commission presumes that the cable system(s) listed in 2.b. is (are) not subject to effective competition. Based on the definition below, do you have reason to believe that this presumption is correct? ☐ Yes ☐ No

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.)

Signature
Title
Date

Return the original and one copy of this certification form (as indicated in Instructions), along with any attachments, to:

Federal Communications Commission
Attn: Cable Franchising Authority Certification
Room L-16
1919 M Street, N.W.
Washington, D.C. 20554

BILLING CODE 6712-01-C

FCC 328
June 1993

Instructions for FCC 329 Cable Programming Service Rate Complaint Form

1. This FCC form is to be used by subscribers, franchising authorities, and other relevant state or local government entities seeking to file a complaint with the FCC challenging the reasonableness of a cable company's rates for cable programming service or for installation or rental of equipment used to receive cable programming service.

2. The term "cable programming service" includes all video programming provided by a cable company except: (1) programming provided on the basic service tier; or (2) programming provided on a pay-per-channel or pay-per-program basis. See Question 9.

3. The "basic service tier" is the tier that includes over-the-air television broadcast signals and public, educational governmental access channels. Under federal law, in most instances, your local franchising authority rather than the FCC regulates rates for the basic service tier or associated equipment. Therefore, if you believe that your rate for the basic service tier or associated equipment is unreasonable, you should contact your local franchising authority to determine if it is authorized to regulate basic service tier rates.

4. Under federal law, video programming provided on a pay-per-channel or pay-per-program basis (for example, a premium movie channel such as HBO or a pay-per-view sports event) is not subject to rate regulation by either the FCC or your local franchising authority.

5. If you are concerned about your rates for cable programming service or associated equipment then you may fill out this form and submit an original and one copy to the FCC. The FCC will examine the reasonableness of your cable programming service rate according to a specific formula. If the rate the cable company currently is charging you for the cable programming service is greater than the rate produced by the FCC's formula, the cable company's rate will be presumed unreasonable. In these circumstances, unless the cable company can provide cost information to justify the reasonableness of its rate, the FCC may order a refund and/or a prospective rate reduction for the cable programming service at issue.

6. Please note the following time limitations for filing a complaint:

- If you are challenging the reasonableness of a rate increase for cable programming service or associated equipment, your complaint must be actually received by the FCC within 45 days from the date you receive a bill from your cable company reflecting the rate increase. (Note: a reduction in number of channels may constitute an effective rate increase even though the existing rate for the cable programming service remains unchanged.)
- The only exception to the 45 day time limitation concerns cable programming service and associated equipment rates in effect when the FCC's rules become effective—that is, June 21, 1993. You may challenge the reasonableness of such rates, but you must file your complaint within 180 days from June 21, 1993—that is, by December 18, 1993.
- After December 18, 1993, you may only file complaints about rate increases and you must follow the general 45-day filing requirement described above.
- Late-filed complaints will be dismissed with no opportunity to refile.

7. In addition to the cable company's name and mailing address, you should provide the cable company's "FCC Community Unit Identifier." (The FCC Community Unit Identifier is a number assigned to each cable system by the FCC for administrative purposes.) Also, you must provide the name and mailing address of the local franchising authority. (The local franchising authority is the local municipal, County or other government organization that regulates cable television in your community.) FCC rules require the cable company to furnish all this information to you on your monthly bill. If this information does not appear either on the front or back of your monthly bill, contact your cable company, your local franchising authority, or your local government to obtain the necessary information before filling out this form.

8. You must indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. Except for a limited opportunity to challenge existing rates in effect on June 21, 1993, complaints may be filed only in the event of a rate increase.

9. If you are a subscriber, you must attach two copies of your monthly cable bill reflecting the rate or rate increase about which you are complaining. If you are challenging the reasonableness of a rate concerning cable programming service or associated equipment in effect on June 21, 1993, the bill should reflect that rate. If you are challenging the reasonableness of a rate increase, the bill should reflect the increased rate. (If you are challenging the reasonableness of a rate increase and have a previous bill which reflects the rate immediately prior to the increase, please attach two copies of the previous bill—note, however, that this is optional.)

10. You must check the box stating your belief that the cable programming service rate is unreasonable. The FCC staff will apply the formula mentioned in paragraph 5 to determine whether the cable company's rate is presumed reasonable or not—you do not need to make this calculation.

11. You must fill in all information required by this form.

12. You may contact your local franchising authority for assistance in filing out this form. In addition, you may attach two copies of a statement from your local franchising authority describing its views on the reasonableness of the cable programming service rate in question. This is not a requirement. If you do attach such a statement, you should also mail a copy of it to the cable company.

13. You must sign and date this form.

14. Once you complete the form copies must be mailed, including all attachments, to the following: Original and one copy: Federal Communications Commission, Attn: Cable Programming Service Rate Complaint, Room L–16, 1919 M Street, N.W., Washington, D.C. 20554; the cable company (at the address listed on your complaint); and the local franchising authority (at the address listed on your complaint).

Please be sure to send all copies to the correct address. If you do not, we may not be able to process your complaint.

15. Note: If you do not mail a copy of this form, including all attachments, to the cable company at the same time you mail your complaint to the FCC, the cable company will not be required to respond and your complaint may be dismissed.

16. If your complaint meets the requirements listed above, the FCC will require the cable company to respond to your complaint within thirty days and provide a justification for the reasonableness of your rate. The cable company must provide you with a copy of its response to the FCC.

17. The FCC staff will examine your complaint and the cable company's response and then rule on the reasonableness of the cable programming service rate. This ruling will in writing, and you will receive a copy by mail. If the FCC staff determines that the rate in question is unreasonable, it may order refunds and/or prospective rate reductions. If it determines that the rate in question is reasonable, the FCC staff will deny the complaint.

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine the reasonableness of a cable company's rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested relief.

Public reporting burden for this collection of information is estimated to average 60 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD–PIRS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–XXXX), Washington, D.C. 20503.

The foregoing notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1975, 5 U.S.C. 522(a)(e)(E) and the Paperwork Reduction Act of 1980, P.L. 96–511, December 11, 1980, 44 U.S.C. 3507.

BILLING CODE 6712–01–M

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

FCC 329
CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM
(Carefully read instructions on reverse before filling out form)

1. Complainant's Name		
Mailing Address		
City	State	ZIP Code
Daytime Telephone No. (include area code):		

2. Local Franchising Authority's Name		
Mailing Address		
City	State	ZIP Code

3. Cable Company's Name		
Mailing Address		
City	State	ZIP Code
Cable Company's FCC Community Unit Identifier (if known):		

4. Indicate whether this is the first time you have filed a complaint with the FCC or whether you are filing a corrected complaint to cure a defect in a prior complaint. CHECK ONE.

☐ First time complaint
☐ Corrected complaint

5. If you are filing a corrected complaint to cure a defect in a prior complaint, indicate the date the prior complaint was filed with the FCC and the date you received notification from the FCC that the prior complaint was defective.

	Month	Date	Year
Date prior complaint filed:			
Date you received FCC notification that the prior complaint was defective:			

6. Indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. (See the Instructions for different filing deadlines depending on which type of complaint you are filing.) CHECK ONE.

☐ Rate in effect on June 21, 1993
☐ Rate increase

7. If you are a subscriber challenging the reasonableness of a rate increase, indicate the date you first received a bill from the cable operator reflecting the rate increase about which you are complaining.

Month	Date	Year

8. Indicate the current monthly rate for the cable programming service or associated equipment and, if you are challenging the reasonableness of a rate increase, the most recent rate in effect immediately prior to the rate increase.

		Month	Year
Current Monthly Rate:	$		
Previous Monthly Rate:	$		

9. In the tables below, describe the cable programming service to which the complaint is addressed and, if applicable, how it has changed. If this space is insufficient, include any additional comments on a separate page attached to this form.

List channels by name included in the service:

List channels by name deleted from the service (if any):

List channels by name added to the service (if any):

10. If you are a subscriber, you must attach two copies of your current bill reflecting the rate or rate increase about which you are complaining. NOTE: Failure to attach two copies of your current bill reflecting the rate or rate increase may result in dismissal of your complaint.
I have attached two copies of my current bill. ☐ Yes ☐ No

11. Optional: If you are a subscriber challenging the reasonableness of a rate increase, attach two copies of a previous bill (if available) reflecting the rate immediately prior to the rate increase.
I have attached two copies of my previous bill. ☐ Yes ☐ No

12. I certify that I am sending a copy of this complaint, including all attachments, to the cable company and the local franchising authority at the addresses listed above via first class mail, postage prepaid, at the same time I am sending two copies of this complaint to the FCC. NOTE: Failure to satisfy this requirement may result in dismissal of your complaint. The cable company will not be required to respond unless you send a copy of the complaint to the cable company by mail.
☐ Yes ☐ No

Date sent:	Month	Date	Year

13. I believe that the cable company's rate for the cable programming service or associated equipment described above is unreasonable because it violates the FCC's rate regulations. (CHECK BOX) ☐

14. I certify that, to the best of my knowledge, the information supplied on this form is true and correct.

Signature
Date

(Note to complainant: This complaint form will be maintained in the FCC's records under the cable company's community unit number. It will not be filed under your name.)

FCC 329
June 1993

[FR Doc. 93-11961 Filed 5-18-93; 8:45 am]

BILLING CODE 6712-01-C

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before July 19, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0021.

Title: Claims for National Flood Insurance Program.

Abstract: The National Flood Insurance Program provides low-cost federally subsidized flood insurance for existing buildings exposed to flood risk. The purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located or to be located within FEMA-identified special flood hazard areas of communities which are participating in the program. The following forms are necessary for the continued proper performance of FEMA's functions related to indemnifying policyholders for flood damages to their properties: FEMA Form 81–40, Worksheet-Contents-Personal Property; FEMA Form 81–41, Worksheet-Building; FEMA Form 81–41a, Worksheet-Building Continuation Sheet; FEMA Form 81–42, Proof of Loss; FEMA Form 81–43, Notice of Loss; FEMA Form 81–44, Statement as to Full Cost of Repair or Replacement Under the Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy; FEMA Form 81–57, National Flood Insurance Program Preliminary Report; FEMA Form 81–58, National Flood Insurance Program Final Report; FEMA Form 81–59, National Flood Insurance Program Narrative Report; FEMA Form 81–63, Cause of Loss and Subrogation Report; and Mobile Home Worksheet.

Type of 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.

Estimate of Total Annual Reporting and Recordkeeping Burden: 153,053 Hours.

Number of Respondents: 40,277.

Estimated Average Burden Time per Response: 3.8 Hours.

Frequency of Response: On occasion.

Dated: May 12, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–11836 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–986–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–986–DR), dated April 26, 1993, and related determinations.

EFFECTIVE DATE: May 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated April 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1993: The counties of Cedar, Des Moines, Louisa, and Scott for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–11838 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–986–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–986–DR), dated April 26, 1993, and related determinations.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated April 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1993: The counties of Benton, Buchanan, Muscatine, and Webster for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–11839 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3110–EM]

North Carolina; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina, (FEMA–3110–EM), dated March 17, 1993, and related determinations.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of North Carolina dated March 17, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the emergency declared by the President in his declaration of March 17, 1993: Assistance is authorized for reimbursement of eligible

debris removal and emergency protective measure costs in the counties of: Alexander, Avery, Catawba, Davie, Forsyth, Graham, Haywood, Jackson, Mitchell, Rockingham, Rowan, Swain, Transylvania, and Yancey. (Already designated for assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles. This amendment does not modify the assistance pertaining to snow plowing activities authorized under the snow emergency declaration.

Pender County for eligible debris removal and emergency protective measures.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–11841 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–987–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–987–DR), dated April 26, 1993, and related determinations.

EFFECTIVE DATE: April 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated April 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1993: Tulsa County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–11837 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3095–EM]

Tennessee; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Tennessee, (FEMA–3095–EM), dated March 14, 1993, and related determinations.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Tennessee dated March 14, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the emergency declared by the President in his declaration of March 14, 1993: Assistance is authorized for reimbursement of eligible debris removal and emergency protective measure costs in the counties of: Bledsoe, Grainger, Grundy, Hamblen, Hancock, Hawkins, Johnson, Rhea, Sequatchie, Unicoi, and Union. (Already designated for assistance for opening critical emergency access on collector roads and streets, and on minor and principal roads for emergency vehicles, authorized for five days.).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–11840 Filed 5–18–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Regal Cruises Limited, Regal Cruises Inc. and International Shipping Partners, 69 Spring Street, Ramsey, NJ 07446–0507.

Vessel: Regal Empress.

Dated: May 13, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–11784 Filed 5–18–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Kloster Cruise Limited (d/b/a Norwegian Cruise Line) and Dynasty Maritime Limited 95 Merrick Way, Two Alhambra Plaza, Coral Gables, FL 33134.

Vessel: WINDWARD.

Dated: May 13, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–11783 Filed 5–18–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Van Esch Trading and Shipping B.V., 6033 West Century Blvd., #1222, Los Angeles, CA 90045, Officers: H. Van Esch, Sr., President, J. Groenedijk, Officer, Willem van Esch, Managing Director

Seiwa America, Inc., 4900 Blazer Parkway, Dublin, OH 43017, Officers: Kazunari Tada, President/Director, Soichiro Miyazaki, Chairman

Logistics Management, Inc., 3190 Clearview Way, San Mateo, CA 94402, Officers: Stephen J. Berry, Jr., Pres./Dir./Stockh., Ronald L. Houggard, Exec. V. Pres./

Director, Joseph G. Bonino, Chairman, William A. Gross, Director

Sea Bridge International, Ltd., 80 Lafayette Street, Copiague, NY 11726, Officer: Theodore Mikucki, President

Da-Ma's Forwarding, Inc., 2250 N.W. 96th Ave., Bay 1, Miami, FL 33172, Officers: Miriam J. Echemendia, President, Gabriel Rodriguez, Vice President, Manuel A. Gaunaurd, Jr., Secretary, Daniel Serrano, Stockholder

Pac-Power Freight Systems, Inc., 8366 Isish Ave., Los Angeles, CA 90045, Officer: Robert Go, President

Armstrong Transfer & Storage Company, Inc., 6950 Business Court, Atlanta, GA, 30340, Officers: Tom Stoops, President, John Libretto, Vice President

Speedy Cargo Services Corp., 9701 Costa Del Sol Blvd., Miami, FL 33178, Officer: Orlando Ochoa, President/Director

KC International, Inc., 1849 Post Road; Warwick, RI 02886, Officers: Thomas E. O'Rourke, President/Stockholder, Shawn P. Reilly, Vice President/Stockholder, Sherri O'Rourke, Treasurer

Blue Star Shipping Corp., 8723 167th Street, Jamaica, NY 11432, Officer: Kurian Thomas, Director/President/Vice President/Secretary/Treasurer/Stockholder

J.G. International Freight Forwarding, Inc., 2118 West 62nd Street, Hialeah, FL 33016, Officers: Guido Guerra, President/Stockholder, Pedro M. Carreras, Exec. Vice President/Stockholder, Ricardo Romero, Secretary/Treasurer/Stockholder, Juan Vicente Gonzales, Vice President/Stockholder

Action Forwarding, International Freight, Inc., 1670 N.W. 94th Ave., Miami, FL 33172, Officers: Michael Acra, President, Adolfo Pumerol, Vice President, Marta Zuluaga, Treasurer, Enrico Raccah, Stockholder, Yesmin Acra, Stockholder

Goldmar Cargo, Inc., 8229 N.W. 68th Street, Miami, FL 33166, Officers: Enrique Chia, President, Jorge Tong, Director/Secretary/Treasurer, Sylvia Mont, Vice President

By the Federal Maritime Commission.

Dated: May 13, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–11782 Filed 5–18–93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Meeting

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Interagency Committee on Smoking and Health.

Time and Date: 9 a.m.–1 p.m., June 23, 1993.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters To Be Discussed: The agenda will focus on exposure to environmental tobacco smoke, particularly in the workplace. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from Karen M. Deasy, Acting Executive Secretary, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 330 C Street, SW., room 1229, Washington, DC, telephone 202/205–8500.

Dated: May 13, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–11846 Filed 5–18–93; 8:45 am]

BILLING CODE 4160-18-M

Preapplication Workshop on Cooperative Agreements for National Minority Organizations (NMO) et al.; Meeting

The National Center for Prevention Services (NCPS) of the Centers for Disease Control and Prevention (CDC) announces the following preapplication workshop.

Name: National and Regional Minority Organizations Preapplication Workshop for Cooperative Agreements—Program Announcement 305.

Time and Date: 10 a.m.–4 p.m., June 3, 1993.

Status: Open to the public, limited only by the space available; seating preference will be given to NMOs and RMOs.

Place: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008, telephone 202/328–2000.

Purpose: To provide information concerning programmatic and business aspects of preparing an application for funding under Program Announcement Number 305.

Eligibility: Congress has authorized funds to provide direct financial and technical assistance to eligible NMOs or RMOs that meet all of the following criteria. To be eligible, an NMO or RMO must:

A. Be an established tax-exempt organization (a nongovernmental, tax-exempt corporation or association whose net earnings in no part lawfully accrue to the benefit of private shareholders or individuals). The following is acceptable evidence of tax-exempt status:

- A reference to the applicant's organization in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code; or
- A copy of a currently valid IRS tax exemption certificate.

B. Have the specific charge from its Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally or regionally (multistate or multiterritory) within the United States and its Territories.

C. Have at least 12 months documented experience in operating and centrally administering a coordinated public health or related program serving racial or ethnic minority populations within a major portion or region (multistate or multiterritory) of the United States through its own offices, organizational affiliates, or the participation of other minority organizations.

D. Have a governing body or broad that is composed of more than 50 percent racial or ethnic minority group members who are representative of the population to be served. Groups recognized as racial and ethnic minority populations are: African-Americans, Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Latinos/Hispanics, and Pacific Islanders.

E. Document that each of the affiliates, chapters, or other minority organizations that will be participating in the program have a governing body or board whose membership is composed of more than 50 percent racial or ethnic minority group members.

F. Document that its program and administrative staff and the program and administrative staff of affiliates and participating organizations involved in the project are representative of the communities and populations to be served.

G. Document experience in sharing financial or technical resources with community based organizations, affiliates, and chapters that provide a variety of services directly to racial and ethnic minority populations.

Availability of Funds: A total of approximately $9,500,000 will be available for these projects.

I. HIV/STD Prevention: Approximately $8,500,000 is expected to be available to fund about 20 NMOs or RMOs to provide technical assistance, training, and other priority assistance in support of HIV/STD prevention services. Approximately eight of these awards will be made to national organizations serving racial or ethnic minority populations in a major portion of the United States. Awards will range from $300,000 to $600,000 with an average award of $400,000. Consideration will be given to supporting HIV/STD technical assistance and training projects in support of organizations and agencies serving persons at high risk in each of the following racial and ethnic minority populations: African-Americans,

Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Latinos/Hispanics, and Pacific Islanders. Organizations serving subgroups which have significant portions of their members at increased risk, such as Caribbean Americans, will also have priority for funding. Consideration will also be given to supporting at least one national or regional HIV/STD technical assistance project for organizations and agencies serving each of the following populations at high risk: gay and bisexual men of color, substance abusers, women at risk, and youth in high-risk situations.

II. Immunization: Approximately $500,000 is expected to be available to fund about one to three NMOs or RMOs to provide technical assistance and training in support of preschool immunization activities. Awards will range from $175,000 to $500,000.

III. TB Prevention and Control: Approximately $500,000 is expected to be available to fund about one to three NMOs or RMOs to provide technical assistance and training in support of TB screening, prevention, and treatment activities. Awards will range from $175,000 to $500,000.

Applicants may apply for funds under one or any combination of the funding categories (i.e., HIV/STD, immunization, or TB), but the proposal must clearly state under which category funds are being required. Regional affiliates of national organizations may apply only if the parent national organization does not submit an application. Otherwise, regional affiliates must submit their proposal as part of the parent national organization's application.

Awards will be made for a 12-month budget period within a 5-year project period. (Budget period is the interval of time into which the project period is divided for funding and reporting purposes. Project period is the total time for which a project has been programmatically approved and meets the criteria outlined in the above section entitled "Eligibility.")

These funds may not supplant or duplicate existing funding from any other public or private source. Although contracts with other organizations are allowable under these cooperative agreement awards, applicants themselves must perform a substantive portion of the activities for which funds are requested. No funds will be provided for patient medical care or purchase of drugs or vaccines.

Matters to be discussed: CDC staff will discuss programmatic and business aspects related to the development and submission of applications for funding under Program Announcement Number 305. Program consultants will provide information concerning the three funding categories (i.e., HIV/STD, immunization, or TB).

General information: This preapplication workshop is expected to last approximately 6 hours (10 a.m.–4 p.m.). You are encouraged to send a business representative and a program representative to the preapplication workshop.

For more information contact: To confirm your attendance, you may call 404/639–0500 or fax 404/639–0537 the following information on or before May 28, 1993, to Sonsiere Cobb: Organization's name and number of attendees.

Dated: May 13, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–11847 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and dates: 1 p.m.–5 p.m., June 8, 1993; 9 a.m.–5 p.m., June 9, 1993; 9 a.m.–3 p.m., June 10, 1993.

Place: Room 503A–529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW.; Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; to explore information needs for health reform; and to address new business as appropriate.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: May 13, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–11845 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–18–M

Departmental Appeals Board

Privacy Act of 1974; New System of Records

AGENCY: Departmental Appeals Board (DAB), Office of the Secretary, Department of Health and Human Services.

ACTION: Notification of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Departmental Appeals Board is publishing a notice of a system of records entitled, "Departmental Appeals Board Case and Appeal Records, HHS/OS/DAB No. 09–90–0049." We have provided background information about the proposed system in the "SUPPLEMENTARY INFORMATION" section below.

DATES: DAB sent a report of the system notice to Congress and the Office of Management and Budget (OMB) on May 13, 1993. The routine uses will be effective 60 days after the submittal of the report of new system to OMB or 30 days after publication of the notice, whichever is later, unless DAB receives comments that would necessitate changes. Interested persons may submit comments on the routine uses during that period.

ADDRESS: Written comments on routine uses should be addressed to: Departmental Appeals Board, U.S. Department of Health and Human Services, Attention: Joseph T. Gatewood, Room 637D, HHH, Building, 200 Independence Avenue, SW., Washington, DC 20201.

Comments received will be available for public inspection in Room 637D, at the above address during normal business hours form 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph T. Gatewood, Departmental Appeals Board, Room 636G, at the above address, or call 202–690–6517.

SUPPLEMENTARY INFORMATION: The Departmental Appeals Board (DAB) proposes to establish a new system of records: 09–90–0049, "Departmental Appeals Board Case and Appeal Records." This system of records will be used by DAB staff to docket, track, manage and decide cases, appeals and matters involving individuals who are parties in matters before the DAB.

This system includes information on all individuals who are parties in matters before the DAB, including their names and addresses and any other information on those individuals that is presented by a party or intervenor to enable the DAB to decide or to decline to decide a matter. The amount of information recorded on each individual will be only that which is necessary to accomplish the resolution of the matter that is before the DAB.

The records in this system will be maintained in a secure manner compatible with their content and use. DAB staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control the access to the data. Only authorized users whose official duties require the use of such information will have regular

access to the records in this system. Authorized users are the DAB staff who are responsible for bringing the matter before the DAB to disposition or resolution.

Records will be stored on documents in file folders in locked file cabinets and on computer disk. Data stored on computers will be accessed only by authorized individuals. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual: "Safeguarding Records Contained in the System of Records."

The routine uses proposed for this system are compatible with the stated purposes of the system. All records that are in the possession of DAB and related to a matter before DAB are public records. The first routine use, disclosure of the case status of a pending or past matter and similar docket information, to any person making an inquiry about such information, is to apprise the public of the status and progress of matters before the Board. The second routine use of this system allows disclosure of information for litigation proceedings involving the United States, its agencies or employees, where the litigation is likely to affect HHS or any of its components. The third routine use permits disclosure to allow subject individuals before the DAB to obtain assistance from their Congressional office. The fourth routine use, permitting disclosure to public and commercial reporters after a decision or matter is final, is for the purpose of developing a body of case law for guidance to persons and agency components by publication and distribution of DAB decisions. The fifth routine use, which permits disclosure to third party contacts, allows the DAB as a decision making, mediating, or advisory body, to obtain access to information necessary or relevant to a matter before DAB. This would include, but is not limited to, the use of subpoenas to obtain information necessary for DAB to carry out its functions. The sixth routine use, which permits disclosure to persons requesting materials in the administrative record or to persons attending DAB hearings, will enable DAB to apprise the public of the basis on which DAB makes its decisions.

Dated: May 13, 1993.

Norval D. John Settle,

Chair, Departmental Appeals Board.

09–90–0049

SYSTEM NAME:

Departmental Appeals Board Case and Appeal Records, HHS/OS/DAB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Rm. 637D, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties in matters before the Departmental Appeals Board (DAB), or who are requesting review or consideration of a matter by DAB.

CATEGORIES OF RECORDS IN THE SYSTEM:

This includes, but is not limited to, pleadings, formal filings, evidence, and other records relevant to the issues being adjudicated or mediated by the DAB and/or its personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The matters adjudicated, decided, and considered by the DAB arise under some or all of the following authorities:

(1) 42 U.S.C. 1320a–7;

(2) 42 U.S.C. 1320a–7a, 42 U.S.C. 1320b–10, 42 U.S.C. 13951, 42 U.S.C. 1395u, 42 U.S.C. 1395cc, 42 U.S.C. 1395dd, 42 U.S.C. 11131, 42 U.S.C. 11137, 31 U.S.C. 3801;

(3) 42 U.S.C. 1320c–5;

(4) 5 U.S.C. 504;

(5) 42 U.S.C. 2000e–16, 29 U.S.C. 631 and 633A, 29 U.S.C. 791;

(6) 5 U.S.C. 301, 42 U.S.C. 289b;

(7) 42 U.S.C. 2000d, 42 U.S.C. 216b, 20 U.S.C. 1405, 29 U.S.C. 794, 42 U.S.C. 290dd, 21 U.S.C. 1174, 20 U.S.C. 1081, 42 U.S.C. 6101;

(8) 42 U.S.C. 1395w–2;

(9) Matters arising under direct discretionary grants awarded to an individual by the Secretary or her designee, including, but not limited to: 42 U.S.C. 216, 42 U.S.C. 241, 42 U.S.C. 242a, 42 U.S.C. 263d, 42 U.S.C. 280b–5, 42 U.S.C. 300a–2, 42 U.S.C. 300a–4, 42 U.S.C. 4585, 42 U.S.C. 300d–4, 21 U.S.C. 1177, 42 U.S.C. 242n, 42 U.S.C. 300z–7, 42 U.S.C. 242c, 42 U.S.C. 242b, 42 U.S.C. 280b–4, 42 U.S.C. 287a, 42 U.S.C. 300b–1;

(10) 42 U.S.C. 1396i, 42 U.S.C. 1395y;

(11) 42 U.S.C. 1395i–3, 42 U.S.C. 1396r, 42 U.S.C. 1395rr, 42 U.S.C. 1395bbb, 42 U.S.C. 263a;

(12) 42 U.S.C. 1320b–8;

(13) 5 U.S.C. 5514; and

(14) Such other matters that may be added to the Board's jurisdiction after submission of this notice.

PURPOSE:

The records are used to track and decide matters that are before the DAB and to develop a body of case law that can guide persons and agency components in the future with respect to matters that are before or might come before the DAB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed:

1. The Board will disclose the status of a pending or past matter, and similar docket information, to any person making an inquiry about such information, to apprise the public of the status and progress of matters before the Board.

2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Justice Department (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to the litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a Congressional office, from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

4. To the public and commercial reporters after a decision is final, for the purpose of distributing and publishing the final DAB decision;

5. To third party contacts, including public and private organizations, in order to obtain information relevant or necessary to the proceedings, such as the subpoena of documents or witnesses, or, in the case of medical practitioners, inquiry into State licensing proceedings; and

6. The Board will disclose records in the Board's administrative case file to persons requesting such records or to

persons attending Board hearings, to apprise the public of the basis on which the Board makes its decisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, and computer disks and tapes.

RETRIEVABILITY:

These records are retrieved by the names of the non-government party or by docket or decision numbers.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Paper records are maintained in file cabinets and offices that only authorized individuals may have access to; computer records are maintained on computer systems and disks that only authorized individuals may use.

RETENTION AND DISPOSAL:

Once a matter is closed, the files are stored and maintained in the DAB file room for a period of time not exceeding seven years. After that time, the files are turned over to the Office of the Secretary, HHS Records Management Officer, Rm. G322A, Switzer Bldg., 330 C St., SW., Washington, DC 20201. The records are then transferred to the Washington National Records Center, Washington, DC 20409, where they are kept for an additional 20 years, after which time they are destroyed. DAB has the option for retaining its written decisions, but not its files, indefinitely, until such time as they have no precedential value.

SYSTEM MANAGER AND ADDRESS:

Chair, Departmental Appeals Board, Room 637D, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURE:

Individuals inquiring whether this system of records contains information about them should contact the System Manager indicated above. It is necessary to provide the following information respecting the individual when making inquiries about records:

a. Full name;

b. Date of birth;

c. Kind of action taken by the agency;

d. Date and location of the filing of the case, appeal or other matter before the DAB; and

e. If appropriate, the DAB docket or decision number.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures, reasonably identify the record, and specify the information to be contested and corrective action sought with the supporting justification.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from:

a. The individuals to whom the record pertains;

b. Agency officials and documents;

c. The testimony, affidavits and statements of witnesses;

d. The documents, received testimony, exhibits and submissions of the parties involved in the matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–11892 Filed 5–18–93; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 92C–0265]

Kemira, Inc.; Withdrawal of Color 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 color additive petition (CAP 2C0238) proposing that the color additive regulations be amended to provide for the safe use of phlogopite mica as a color additive for use in externally applied drugs and externally applied cosmetics, including those for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 28, 1992 (57 FR 33358), FDA announced that a color additive petition (CAP 2C0238) had been filed by Kemira, Inc., P.O. Box 368, Savannah, GA 31402. This petition proposed that §§ 73.1496 *Mica* and 73.2496 *Mica* (21 CFR 73.1496 and 73.2496) be amended to provide for the safe use of phlogopite mica as a color additive for use in externally applied drugs and externally applied cosmetics, including those for use in the area of the eye. Kemira, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6).

Dated: May 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–11826 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0151]

Mitsubishi Gas Chemical Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of the Mitsubishi Gas Chemical Co., Inc., proposing that the food additive regulations be amended to provide for the safe use of Nylon MXD–6 as a nonfood contact component in laminated articles for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4372) has been filed on behalf of the Mitsubishi Gas Chemical Co., Inc., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes that the food additive regulations in § 177.1390 *Laminate structures for use at temperatures of 250 °F and above* (21 CFR 177.1390) and § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the safe use of Nylon MXD–6 as a nonfood contact component in laminated articles for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–11830 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0157]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of two carbon monoxide-olefin polymers, carbon monoxide-ethylene and carbon monoxide-ethylene-propylene as articles or components of articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4373) has been filed by Shell Oil Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210. The petition proposes that the food additive regulations be amended to provide for the safe use of two carbon monoxide-olefin polymers, carbon monoxide-ethylene and carbon monoxide-ethylene-propylene as articles or components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–11827 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0152]

Witco Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Witco Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of decanedioic acid, polymer with 1,2-ethanediamine, (Z,Z)-9,12-octadecadienoic acid dimer and 4,4'-(1,3-propanediyl)bis(piperidine) as a polymeric coating on aluminum foil, polyolefin film, and paper and paperboard and as an adhesive, for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4348) has been filed by Witco Corp., 5777 Frantz Rd., P.O. Box 646, Dublin, OH 43017. The petition proposes that the food additive regulations be amended to provide for the safe use of decanedioic acid, polymer with 1,2-ethanediamine, (Z,Z)-9,12-octadecadienoic acid dimer and 4,4'-(1,3-propanediyl)bis(piperidine) as a polymeric coating on aluminum foil, polyolefin film, and paper and paperboard and as an adhesive, for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–11829 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Subcommittee Meeting of the Generic Drugs Advisory Committee

Date, time, and place. June 2, 1993, 8 a.m., Holiday Inn, Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 4:15 p.m.; open public hearing, 4:15 p.m. to 5:15 p.m., unless public participation does not last that long; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 26, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. As a followup to the October 11, 1991, meeting announced in the **Federal Register** of October 1, 1991 (56 FR 49776), at which FDA's Division of Bioequivalence in its Office of Generic Drugs presented possible study designs

for the assessment of bioequivalence of albuterol metered dose inhalers (MDI's), there will be a subcommittee meeting of the Generic Drugs Advisory Committee. The meeting is intended to inform interested persons of the results of FDA contracted pilot studies done at the Johns Hopkins University School of Medicine concerning albuterol dose/response relationships delivered by MDI's. These results will serve as the basis for the Office of Generic Drugs' draft interim bioequivalence guidance for albuterol MDI's.

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 7, 1993, 8:30 a.m., Ramada Inn, Ambassador Room, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 6 p.m.; Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1096.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 17, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for an instrument which makes cytologic preparations on glass slides from gynecologic (cervical) samples for use in cytologic examinations.

Oncologic Drugs Advisory Committee

Date, time, and place. June 17, 1993, 8 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m to 4 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 11, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) The new drug application for Daunoxome® Injection (liposomal daunorubicin, Vestar, Inc.) (NDA 50–704) for treatment of advanced human immunodeficiency virus related Kaposi's sarcoma in patients who have failed conventional chemotherapy or for whom conventional chemotherapy is contraindicated; and (2) the premarket application for Spherex® Injection (degradable starch microspheres, Kabi Pharmacia, Inc.) (PMA P920043), for the temporary occlusion of the hepatic vasculature in the treatment of primary and secondary liver tumors. The repeated intraarterial coinjection of Spherex® Injection with either doxorubicin or mitomycin has been shown to increase the response rate in liver cancers. In addition, Spherex® Injection decreases the peak and total levels of the coinjected drugs in the systemic circulation.

Subcommittee of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 18, 1993, 8:30 a.m., Parklawn Bldg., conference rm. D, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 5 p.m.; Cornelia B. Rooks, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1244.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearings. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. FDA is developing guidance documents for manufacturers on how to prepare and submit applications for obtaining approval/clearance for human genetic in vitro diagnostic devices. FDA is inviting manufacturers, manufacturers' trade associations, professional organizations, and other interested persons to attend an open public hearing and share opinions with FDA on appropriate requirements for assuring the safety and effectiveness of genetic in vitro diagnostic devices. Discussions will focus on guidance for regulation of cytogenetic devices that utilize in situ hybridization technologies for detection of human genetic mutations (constitutional and acquired). This committee will review and evaluate FDA's proposed guidance documents and make recommendations.

Subcommittee Meeting of the Generic Drugs Advisory Committee

Date, time, and place. June 21 and 22, 1993, 8 a.m., Holiday Inn, Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, June 21, 1993, 8 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open committee discussion, June 22, 1993, 8 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Secretary of Health and Human Services, the

Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 14, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 21, 1993, the subcommittee will discuss issues relating to stability testing of new drug substances and drug products. The decisions reached will be considered in the development of the agency's position on a stability testing guideline prepared by the Quality Expert Working Group of the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), which published in the **Federal Register** of April 16, 1993 (58 FR 21086).

On June 22, 1993, the subcommittee will discuss issues relating to impurity testing of new drug substances and drug products. Information relative to this discussion will also be used by FDA staff in the ICH process.

Information from the discussions held on June 21 and June 22, 1993, will be used in the agency's response to ICH–2, the Second International Conference on Harmonization to be held in Orlando, FL, from October 27 to 29, 1993.

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 29, 1993, 8:30 a.m., Piccard Bldg., rm. 100, 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 5 p.m.; Robert Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1296.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 25, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a petition submitted by a manufacturer to change the parameter used in describing and comparing the nonthermal effects of diagnostic ultrasound devices, specifically, to use the Mechanical Index rather than the historical Spatial Peak Pulse Average Intensity for making substantially equivalent decisions.

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 29, 1993, 9 a.m., Holiday Inn Crowne Plaza, Plaza III Ballroom, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1034.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 15, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application supplement for the use of prostate specific antigen as an aid in the early detection of prostate cancer.

Advisory Panel Chairpersons Meeting of the Medical Devices Advisory Committee

Date, time, and place. June 30, 1993, 1:30 p.m., Holiday Inn Crowne Plaza, Plaza III Ballroom, Rockville, MD.

Type of meeting and contact person. Open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 5 p.m.; Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), 1390 Piccard Dr., Rockville, MD 20850, 301–427–1022.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the advisory panel chairpersons. Those desiring to make a formal presentation should notify the contact person before June 15, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The advisory panel chairpersons will discuss proposed changes in the scope of 510(k) exemptions and the possibility of assigning certain categories of class I and, potentially, some class II devices to administrative review but not to scientific review.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever

longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 12, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–11828 Filed 5–18–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Center for Nursing Research; Meeting of the National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Center for Nursing Research; and its Subcommittees, June 14–16, 1993, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on June 15, from 8:30 a.m. to 4 p.m. and on June 16, from approximately 11 a.m. to adjournment. Agenda items will include: The NCNR Director's Report, Presentation by NCNR Grantee, Health Promotion/Disease Prevention Branch Report, Office of Information and Legislative Report, Schools of Nursing: Research Intensive Environments, Status of NINR, Individual Investigator Award, ACHPR Panel, Policy Issues Prior to Grant Review and the Report of the National Nursing Research Round Table.

The National Nursing Research Agenda Subcommittee will meet in open session June 14, in Building 31C, Conference Room 6, from 9 a.m. to 11 a.m. to discuss the National Nursing Research Agenda in general and the Priority Expert Panels in particular.

The Planning Subcommittee will meet in open session June 14, in Building 31C, Conference Room 6, from 11 a.m. to 1 p.m. to discuss long-term and strategic planning and policy issues.

The Biennial Report Subcommittee will meet in open session June 14, in Building 31, NCNR Conference Room (5B–03), from 3 p.m. to 5 p.m. to discuss the activities and program policies of the Center.

The Nursing Resources and Health Policy Subcommittee will meet in open session June 15, in Building 31B, NCNR Conference Room, (5B–03), from 5 p.m. to 6 p.m. to discuss nursing resources and health policy as they relate to nursing science and the achievement of quality and effective outcomes in patient care.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92–463, the meeting of the Research Subcommittee will be closed to the public on June 14, from 1 p.m. to 3 p.m., and the meeting of the full Council on June 16, from 8:30 a.m. to approximately 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Ethel Jackson, 301–496–0472 in advance of the meeting.

Dr. Ethel Jackson, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B25, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: May 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11811 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings of the National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on June 17–18, 1993. Meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases and Subcommittee will be held at the National Institutes of Health, Building 31C, Bethesda,

Maryland 20892. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting of the full Council will be open to the public on June 17 in conference room 6 from approximately 1 p.m. until 3:45 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a discussion of the Childhood Vaccine Plan by the Director, Division of Microbiology and Infectious Diseases, as well as presentations on grants policy issues and the AIDS research agenda.

On June 18 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until recess. Both subcommittees will meet at the National Institutes of Health, Building 31C in conference rooms 7 and 6 respectively. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until recess on June 18. The subcommittee will meet in the Congressional Ballroom, Bethesda Marriott Hotel, Bethesda, Maryland.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on June 17, in conference rooms 8, 7 and 6 respectively. The meeting of the full Council will be closed from 3:45 p.m. until recess on June 17 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, room 4C02, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, room 4C07, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11805 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 3 and 4, 1993, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 3 from 8:30 a.m. to 9 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 3 from 9 a.m. to recess and again on June 4 from 8:30 a.m. to adjournment in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, rm. 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: May 12, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–11806 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of a National Deafness and Other Communication Disorders Advisory Council Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of a National Deafness and Other Communication Disorders Advisory Council subcommittee on June 8–10, 1993, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting will be in Building 31C, Room 3C07.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the subcommittee will be closed to the public from 7:30 pm June 8 to adjournment on June 10. The closed meeting will be for the review, discussion, and evaluation of NIDCD Multipurpose Research Training Centers. The discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the centers, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning subcommittee meeting may be obtained from Dr. John C. Dalton, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400B, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and roster of

the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: May 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11813 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

Meeting on Training Requirements for Dental, Oral and Craniofacial Clinical Trials

Notice is hereby given that the Extramural Program, National Institute of Dental Research, will hold an open meeting on June 14, 1993, from 10 a.m. until 4 p.m., in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, 20892.

The objective of the meeting is to solicit comments from representatives of the academic, industrial and governmental oral health research communities on the types of training needed to develop personnel capable of designing and conducting state-of-the-art clinical trials of methods for the prevention, diagnosis and treatment of dental, oral and craniofacial diseases and disorders. Opportunities for collaboration to provide such training will be discussed.

Further information may be obtained from: Dr. John D. Townsley, Associate Director for Policy and Coordination, Extramural Program, NIDR, NIH, Westwood Building, room 503, Bethesda, Maryland 20892, telephone (301) 594–7642. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Extramural Program office listed above in advance of the meeting.

Dated: May 10, 1993

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11808 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held June 14–16, 1993, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on June 15 for general discussion and program presentations. A meeting of the National Advisory Dental Research Council Subcommittee on Minority Activities will be held on June 14 from 3 p.m. until adjournment in Conference Room 4, Building 31A, National Institutes of Health, Bethesda, Maryland. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on June 16 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance, such as sign language, interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: May 10, 1993

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11810 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of meetings of Subcommittees C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact the Scientific Review Administrators indicated at least two weeks prior to the meeting.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C

Scientific Review Administrator: Daniel Matsumoto, Westwood Building, Room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–594–7587

Dates of Meeting: June 14–15, 1993

Place of Meeting: Embassy Suites, 4300 Military Road, NW, Washington, DC 20015

Open: June 14, 8:00 a.m.–8:30 a.m.

Closed: June 14, 8:30 a.m.–recess; June 15, 8:00 a.m.–adjournment

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D

Scientific Review Administrator: Ann A. Hagan, Westwood Building, Room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–594–7575

Dates of Meeting: June 25, 1993

Place of Meeting: Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852

Open: June 25, 8:00 a.m.–6:00 p.m.
Closed: June 25, 6:00 p.m.–adjournment

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11809 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June and July 1993.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee
Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301–594–7758
Dates of Meeting: June 2, 1993
Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892
Open: June 2, 8:30 a.m.–9:30 a.m.
Closed: June 2, 9:30 a.m.–adjournment

Name of Committee: Pharmacological Sciences Review Committee
Scientific Review Administrator: Dr. Irene Glowinski, room 9A18, Westwood Building, Telephone: 301–594–7741
Dates of Meeting: June 3, 1993
Place of Meeting: 5333 Westbard Avenue (Telephone Conference), room 9A18, National Institutes of Health, Bethesda, Maryland 20892
Open: June 3, 1:30 p.m.–2 p.m.
Closed: June 3, 2 p.m.–adjournment

Name of Committee: Genetic Basis of Disease Review Committee
Scientific Review Administrator: Dr. Arthur Zachary, room 9A14, Westwood Building., Telephone: 301–594–7758
Dates of Meeting: June 7, 1993
Place of Meeting: 5333 Westbard Avenue (Telephone Conference), room 9A14, National Institutes of Health, Bethesda, Maryland 20892
Open: June 7, 1 p.m.–1:30 p.m.
Closed: June 7, 1:30 p.m.–adjournment

Name of Committee: Minority Access to Research Careers Review Subcommittee
Scientific Review Administrator: Dr. Richard Martinez, room 9A18, Westwood Building, Telephone: 301–594–7803
Dates of Meeting: June 21–22, 1993
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892
Open: June 21, 8:30 a.m.–9:30 a.m.
Closed: June 21, 9:30 a.m.–5 p.m.; June 22, 8:30 a.m.–adjournment

Name of Committee: Minority Biomedical Research Support Review Subcommittee
Scientific Review Administrator: Dr. Ernest Marquez, room 9A13, Westwood Building, Telephone: 301–594–7708
Dates of Meeting: July 15–16, 1993
Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892
Open: July 15, 8:30 a.m.–9:30 a.m.
Closed: July 15, 9:30 a.m.–5 p.m.; July 16, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Date: May 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11807 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 27–29, 1993, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on June 27, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 27, from 8:30 p.m. to adjournment on June 29, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood

Building, room 550, Bethesda, Maryland 20892, (301) 594–7450, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11803 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Biomedical Library Review Committee on June 23–24, 1993, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 23 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on June 23 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on June 24 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: May 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11804 Filed 5–18–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on June 17–18, convening at 9 a.m. on June 17 and at 8:30 a.m. on June 18 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 17 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Ms. Diane Gibbs at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in section 552b(c)(9)(B), title 5, U.S.C., Public Law 92–463, the meeting will be closed on June 17 from 10:30 a.m. to approximately 5 p.m. and on June 18 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: May 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–11812 Filed 5–18–93; 8:45 a.m.]

BILLING CODE 4140–01–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.

Bureau/Office: Office of Public Assistance.

Title of Form: Identification of Minority and Female-Owned Motor Carriers.

OMB Form Number: 3120–0050.

Agency Form Number: OPA 81–1.

Frequency: Annually.

No. of Respondents: 325.

Total Burden Hours: 17.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–11867 Filed 5–18–93; 8:45 am]

BILLING CODE 7035–01–M

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–277X, West Virginia Northern Railroad, LTD.—Abandonment

Exemption—In Preston County, West Virginia. EA available 5/14/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–11865 Filed 5–18–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32280]

South Central Rail Group—Control Exemption—Three Railroads

The South Central Rail Group (SCRG) has filed a notice of exemption [1] to acquire control, through stock ownership of: (1) All the common stock of the Nashville and Eastern Railroad Corporation (NERR), an exempt rail carrier, which operates, pursuant to a lease and operating agreement with the Nashville and Eastern Railroad Authority, lines of railroad from (a) milepost .04 at Nashville, TN, to milepost 110.5 at Monterey, TN; (b) from milepost 189.5 at Vine Hill, TN, to milepost 194.1 at Southern Junction, TN; (c) from milepost NX 0.00 at Cartage Junction, TN, to milepost NX 7.56 at Cartage, TN; and (d) from milepost 0.1 at Donelson, TN, to milepost 8.0 at Old Hickory, TN; (2) all of the common stock of the West Tennessee Railroad Corp. (WTNN), an exempt rail carrier, which operates, pursuant to a lease and operating agreement, a 44-mile line of railroad owned by the Gibson County Railroad Authority from Lawrence, TN, to Kenton TN, as well as on trackage rights from Lawrence, TN, to Jackson, TN; and (3) 81 percent of the shares of the Tennken Railroad Co. Inc. (TKEN), an exempt rail carrier, which operates, pursuant to a lease and operating agreement, a 51.79-mile line of railroad owned by the Hickman River City Development Corp. from Dyersburg, TN, to Hickman, KY.

The Shareholders of NERR and WTNN, which also own 81 percent of the common stock TKEN, have agreed to form SCRG as a means to continue operation of these three railroads in the event of the death of retirement of any shareholder, each of whom is an officer of all those carriers. The parties plan to consumate the transaction on or after May 15, 1993. SCRG indicates that: (1) The lines of NERR, WTNN, and TKEN do not connect nor do they connect with any other rail lines controlled by any member of SCRG's corporate family; (2) the involved transaction is not part of a series of anticipated transactions that would connect these railroads with each other; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).[2]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John F. McHugh, 20 Exchange Place, New York, NY 10005.

Dated: May 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–11866 Filed 5–18–93; 8:45 am]

BILLING CODE 7035–01–M

[1] Amended on May 5, 1993.

[2] Although SCRG states that the transaction will have no effect on employees, imposition of labor protective conditions is mandatory for section 11343 transactions. 49 U.S.C. 11347.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–043]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Magnetic Power, Inc., of Sabastopol, California, an exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,100,331 entitled "Dual Membrane, Hollow Fiber Fuel Cell and Method of Operating Same," which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on July 11, 1978. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by July 19, 1993.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: May 6, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–11825 Filed 5–18–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Debris Plugging of Emergency Core Cooling Suction Strainers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NRC Bulletin No. 93–02, "Debris Plugging of Emergency Core Cooling Suction Strainers." This bulletin is available in the Public Document Rooms under accession number 9305110015. This bulletin is discussed in Commission information paper SECY–93–125 which is also available in the Public Document Rooms.

DATES: The bulletin was issued on May 11, 1993.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Peter C. Wen (301) 504–2832.

Dated at Rockville, Maryland, this twelfth day of May 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–11820 Filed 5–18–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to Airport and Airway Improvement Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to the Airport and Airway Improvement Act.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of

1982, as amended, the United States Trade Representative ("USTR") has decided not to include any countries at this time on the list of countries that deny market opportunities for products, suppliers or bidders for government-funded construction projects.

DATES: Effective April 30, 1993.

ADDRESSES: Office of the United States Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Charles Lake, Director for Japanese Affairs, (202) 395-5070 or Laura Sherman, Assistant General Counsel, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 115 of Public Law No. 100-223, the Airport and Airway Safety and Capacity Expansion Act of 1987, amended the Airport and Airway Improvement Act of 1982 ("Airport Act"), by adding section 533. Section 533(a) provides certain requirements and prohibitions applicable to use of funds from the Airport and Airway Trust Fund. Section 533(b) requires the USTR to make determinations with respect to whether foreign countries deny fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects of $500,000 or more that are funded (in whole or in part) by the governments of such foreign countries. Section 533(c) requires the USTR to maintain a list of countries identified under section 533(b) and to publish such list annually in the Federal Register.

The USTR has determined that no foreign country denies fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects in such country for the purposes of the Airport and Airway Improvement Act. This decision with respect to Japan is based upon the fact that on April 30, 1992, the USTR identified Japan under title VII of the Omnibus Trade and Competitiveness Act of 1988 for discrimination in procurements of construction, architectural, and engineering services.

Ira Shapiro,

General Counsel.

[FR Doc. 93-11786 Filed 5-18-93; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32295; File No. SR-MSTC-93-07]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Schedule of Services and Charges

May 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 30, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSTC-93-07) 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 revises MSTC's fee schedule based on management's review of operating expenses for 1992, projected volumes for 1993 and related costs (see Exhibit A). The revisions also are designed to conform more closely MSTC's associated revenues and expenses. The effectiveness of the proposed fee schedule will terminate on March 4, 1994, unless extended.[2]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The present rule filing replaces an identical proposal filed by MSTC pursuant to section 199(b)(3)(A) of the Act (File No. SR-MSTC-93-06 (April 16, 1993)) which was withdrawn by MSTC on April 29, 1993. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (April 29, 1993). In addition, in conjunction with the withdrawal of the previous rule filing, MSTC also has filed an identical proposal which is to be considered pursuant to section 19(b)(2) of the Act. See Securities Exchange Act Release No. 32296 (May 12, 1993). The purpose of these related filings is to assure that the revised fee schedule, which was effective immediately upon filing with the Commission, will expire on March 4, 1994, unless approved by the Commission pursuant to section 19(b)(2) of the Act. In addition, the related filings will clarify that the proposed rule change should be viewed as a package with two previously filed rule changes by MSTC relating to discounts for primary users of available MSTC services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make revisions to MSTC's fee schedule based on management's review of operating expenses for 1992, projected volumes for 1993, and related costs. The revisions also are designed to conform more closely to MSTC's associated revenues and expenses.

In general, the line item fees remain unchanged for 1993. The proposed adjustments reflect decreases realized due to economies of scale, multiple event processing, and increased levels of automation. Increases are the result of activities related to the physical handling of securities or single event processing within given assets.

The proposed rule change and two prior MSTC rule filings relating to the modification of MSTC's fee schedule to provide discounts to participants who are primary users of available MSTC services should be viewed as a package.[3] As used in these filings, the term primary users generally includes participants who use MSTC as their primary securities depository. Under the discount program, participants who make a commitment in writing to continue to use MSTC as their primary custodian for a period of two to three years and who have been participants for at least one year would receive discounted service charges. The proposed discount fee schedule for primary users was effective upon filing pursuant to section 19(b)(3)(A) of the Act with a termination date of March 4, 1994, unless extended.[4] In addition, comment has been requested on an

[3] For further details concerning MSTC's discount program for primary users, see Securities Exchange Act Release Nos. 31866 (February 17, 1993), 58 FR 11076, and 31867 (February 17, 1993), 58 FR 11079.

[4] Securities Exchange Act Release No. 31866 (February 17, 1993), 58 FR 11076.

identical fee filing made pursuant to section 19(b)(2) of the Act.[5] The impact of the increased revenue produced as a result of the proposed rule change, when viewed in conjunction with the discount program for primary users of available MSTC services, is intended to be revenue neutral to MSTC.

MSTC believes that the proposed rule change is consistent with the requirements of sections 17A(b)(3)(D) of the Act,[6] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC has not solicited written comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the File No. SR–MSTC–93–07 and should be submitted by June 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY

[1993 Fee Revision Summary]

Service	Current	Service	Revised
Account Maintenance		Account Maintenance	
First two accounts		First two accounts	
Total Fee All Services (per acct.)	$475.00	Total Fee Services (per acct.)	$575.00
All accounts Over 2		All accounts Over 2	
Total Fee All Services (per acct.)	200.00	Total Fee All Services (per acct.)	250.00
Safekeeping		Safekeeping	
Position Fee	0.58	Position Fee	0.49
Equity Thinly Held Surcharge	0.22	Equity Thinly Held Surcharge	0.25
Corporate Debt Thinly Held Surcharge	0.22	Corporate Debt Thinly Held Surcharge	0.25
Registered Muni Thinly Held Surcharge	0.72	Registered Muni Thinly Held Surcharge	0.75
Dividends and Interest		Dividends and Interest	
Cash Dividend Credit	1.40	Cash Dividend Credit	1.28
Stock Dividend Credit	16.00	Stock Dividend Credit	8.75
Registered Muni Interest Credit	2.10	Registered Muni Interest Credit	1.60
Registered Corporate Bond Interest Credit	1.40	Registered Corporate Bond Interest Credit	1.28
Dividend Reinvestment		Dividend Reinvestment	
Dividend Reinvestment	25.00	Dividend Reinvestment	10.00
Reorganizations		Reorganizations	
Full Call, Partial Call and Maturities—Registered or Bearer.	28.00	Full Call, Partial Call and Maturities—Registered or Bearer.	no change.
Value Charge, Full Call, Partial Call and Maturities—Registered or Bearer.	0.05/1000	Value Charge, Full Call, Partial Call and Maturities—Registered or Bearer.	0.15/1000 (250.00 maximum).
Conversion and Warrants (included in non-mandatory).	35.00/transaction	Conversion and Warrants○	0.072/share (28 minimum, 144 maximum).
Depository Delivery Instructions		Depository Delivery Instructions	
All DDI items	0.45	All DDI items	0.54
Deposits		Deposits	
Regular Deposits		Regular Deposits Active*	
11:30–4:30	1.75	11:30–4:30	1.54
11:00–11:30	25.00	11:00–11:30	7.75

[5] Securities Exchange Act Release No. 31867 (February 17, 1993), 58 FR 11079.

[6] 15 U.S.C. 78q-1(b)(3)(E) (1988).

[7] 17 CFR 200.30–3(a)(12).

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY—Continued

[1993 Fee Revision Summary]

Service	Current	Service	Revised
7:30–11:00	2.75	7:30–11:00	2.35
		Less Active**	
		11:30–4:30	2.49
		11:00–11:30	8.70
		7:30–11:00	3.30
Deposit Surcharge	0.02/1000 over 15,000.	Deposit Surcharge	0.00
Deposit Reclaim	20.00	Deposit Reclaim	23.00
Full Legal Deposits		Full Legal Deposits	
1–500	6.50	1–500	no change.
501 and over	4.50	501 and over	4.30
Basic Legal Deposits		Basic Legal Deposits	
00:01–10:59 (same day)	4.25	00:01–10:59 (same day)	no change.
11:00–11:30	26.50	11:00–11:30	9.25
11:31–24:00 time range (next day credit)	3.25	11:31–24:00 time range (next day credit)	2.67
		Deposit Mail Surcharge (for Agent outside NYC).	0.90/deposit.
Reorg Deposit	2.75	Reorg Deposit Surcharge	3.15
Withdrawals		Withdrawals	
Street Request	12.00	Street Request	22.00
		Certificate Fees	
		Transfer Agent fee is ≤ $3.50	7.55/withdrawal.
		Transfer Agent Fee is ≥ $3.51	16.20/withdrawal.
Manual Pulls	30.00	Manual Pulls	50.00
Transfer Service		Transfer Service	
Transfers	2.00	Transfers	
		Active*	1.81
		Less Active**	3.46
Direct Mail	3.35	Direct Mail	
		Active*	2.82
		Less Active**	4.74
Check Fee	2.50	Check Fee	0.00
(Plus applicable Certificate Fee)		Certificate Fees	
		Transfer Agent fee is ≤ $3.50	5.35/certificate.
		Transfer Agent fee is ≥ $3.51	10.75/certificate.
Reclamation Transfer	2.75	Reclamation Transfer	0.00
(Plus Basic Legal Same Day Re-Deposit fee).	4.25	(Same as Basic Legal Same Day Re-Deposit fee).	4.25
Transfer Shipping	1.24+0.04/1,000	Transfer Shipping	0.90+0.04/1,000
Pledge Loan Program		Pledge Loan Program	
Pledge and Release movements	0.68	Pledge and Release movements	0.54
Underwriting Issuance		Underwriting Issuance	
Issuance Fee	400.00	Single CUSIP issues, par value ≤ $1 million	50.00
		Single CUSIP issues, par value ≤ $3 million	125.00
		Single CUSIP issues, par value > $3 million	200.00
		Multiple CUSIP issues, par value ≤ $1 million	100.00
		Multiple CUSIP issues, par value ≤ $3 million	250.00
		Multiple CUSIP issues, par value > $3 million	400.00
		CD's (Certificates of Deposit)	90.00
Position Fee	0.45	Position Fee	0.54
Unit Swingover		Unit Swingover	
Swingover Instruction	11.00	Swingover Instruction	9.00
Overnight Safekeeping		Overnight Safekeeping	
Flat fee per issue	6.00		
Nightly fee per certificate	0.75		
		Registered Securities	15.00
		Bearer Securities	28.00
Interface		Interface	
DTC Interface charge	1.00	DTC Interface charge	0.00
Participant Cash Movement		Participant Cash Movement	
Participant Cash Movement	1.50	Participant Cash Movement	0.54
Communications		Communications	
Leased Line Charge	362.00	MSTC Leased Line Charge	440.00
Leased equipment (1CRT, 1CTL, 1PRT) from various lease terms and fees.	variable/month	Leased equipment (1CRT, 1CTL, 1PRT) from various lease terms and fees.	400.00/month.
On-line Inquiry	0.03	On-line Inquiry	0.085
Limited Access Option		Limited Access Option	
Report Retrieval, DOCS, Communique System only.	100.00	Report Retrieval, DOCS, Communique System only.	100.00 plus time, character and port charge.

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY—Continued

[1993 Fee Revision Summary]

Service	Current	Service	Revised
Inquiry, Report Retrieval, DOSC, and Communique System.	200.00	Inquiry, Report Retrieval, DOSC, and Communique System.	200.00 plus time, character and port charge.
Hard Copy Reports		Hard Copy Reports	
Hard copy reports (Activity, Net Position, P&S) plus charge for.	10/copy +	Hard copy reports (Activity, Net Position, P&S) plus charge for.	15/copy +
Over 500 page count for each report	0.028/page	Over 500 pages for all reports combined	0.038/page.
		All other reports	0.038/page.
Hard Copy Input		Hard Copy Input	
Surcharge for all hard copy input done by MSTC on behalf of Participants.	2.00	Surcharge for all hard copy input done by MSTC on behalf of Participants.	7.00
Audit Confirmation Package		Audit Confirmation Package	
Participant requested audit confirmation	25.00 plus shipping/handling.	Participant requested audit confirmation (request prior to audit date).	25.00 plus shipping/handling.
		Participant requested audit confirmation (request after audit date).	50.00 plus shipping/handling.
Shipping		Shipping	
All couriers except Brinks	Rebill plus 1.00 Midwest handling fee plus insurance.	All couriers except Brinks	Rebill plus 2.00 Midwest handling fee plus insurance.
Brinks	Rebill @ $9.95 per package, plus 0.03/1000 value, plus 0.18/ounce.	Brinks	no change.
Shipments to Transfer Agents	Rebill @ 0.04/1000 value, plus 1.24 handling fee.	Shipments to Transfer Agents	Rebill @ 0.04/1000 value, plus 0.90 handling fee.

Notes: ○ Non-mandatory Reorganization will no longer include conversions.
* Active—defined as issues which averaged > 2 transactions on days when transactions occurred during the month.
** Less Active—defined as issues which averaged ≤ 2 transactions on days when transactions occurred during the month.

[FR Doc. 93-11800 Filed 5-18-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32296; File No. SR-MSTC-93-08]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Filing of Proposed Rule Change Relating to Revisions to the Schedule of Services and Charges

May 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 30, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSTC-93-08) 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.

[1] 15 U.S.C. 78s(b)(1) (1988)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change revises MSTC's fee schedule based on management's review of operating expenses for 1992, projected volumes for 1993 and related costs (see Exhibit A). The revisions also are designed to conform more closely MSTC's associated revenues and expenses.[2]

[2] The present rule filing replaces an identical proposal filed by MSTC pursuant to section 19(b)(3)(A) of the Act (File No. SR-MSTC-93-06 (April 16, 1993)) which was withdrawn by MSTC on April 29, 1993. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (April 29, 1993). In addition, in conjunction with the withdrawal of the previous rule filing, MSTC also has filed an identical proposal which is to be considered pursuant to section 19(b)(3)(A) of the Act. See Securities Exchange Act Release No. 32295 (May 12, 1993). The purpose of these related filings is to assure that the revised fee schedule, which was effective immediately upon filing with the Commission, will expire on March 4, 1994, unless approved by the Commission pursuant to section 19(b)(2) of the Act. In addition, the related filings will clarify that the proposed rule change should be viewed as a package with two previously filed rule changes by MSTC relating to discounts for primary users of available MSTC services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make revisions to MSTC's fee schedule based on management's review of operating expenses for 1992, projected volumes for 1993, and related costs. The revisions also are designed to conform more closely MSTC's associated revenues and expenses.

In general, the line item fees remain unchanged for 1993. The proposed adjustments reflect decreases realized due to economies of scale, multiple

event processing, and increased levels of automation. Increases are the result of activities related to the physical handling of securities or single event processing within given assets.

The proposed rule change and two prior MSTC rule filings relating to the modification of MSTC's fee schedule to provide discounts to participants who are primary users of available MSTC services should be viewed as a package.[3] As used in these filings, the term primary users generally includes participants who use MSTC as their primary securities depository. Under the discount program, participants who make a commitment in writing to continue to use MSTC as their primary custodian for a period of two to three years and who have been participants for at least one year would receive discounted services charges. The proposed discount fee schedule for primary users was effective upon filing pursuant to section 19(b)(3)(A) of the Act with a termination date of March 4, 1994, unless extended.[4] In addition, comment has been requested on an identical fee filing made pursuant to section 19(b)(2) of the Act.[5] The impact of the increased revenue produced as a result of the proposed rule change, when viewed in conjunction with the discount program for primary users of available MSTC services, is intended to be revenue neutral to MSTC.

MSTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(D) of the Act,[6] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

MSTC has not solicited written comments with respect to the proposed rule change, and none have been 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 determined whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the File No. SR–MSTC–93–08 and should be submitted by June 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY

[1993 Fee Revision Summary]

Service	Current	Service	Revised
Account Maintenance:		**Account Maintenance:**	
First two accounts		First two accounts	
Total Fee All Services (per acct.)	$475.00	Total Fee All Services (per acct.)	$575.00
All accounts Over 2		All accounts Over 2	
Total Fee All Services (per acct.)	200.00	Total Fee All Services (per acct.)	250.00
Safekeeping:		**Safekeeping:**	
Position Fee	0.58	Position Fee	0.49
Equity Thinly Held Surcharge	0.22	Equity Thinly Held Surcharge	0.25
Corporate Debt Thinly Held Surcharge	0.22	Corporate Debt Thinly Held Surcharge	0.25
Registered Muni Thinly Held Surcharge	0.72	Registered Mini Thinly Held Surcharge	0.75
Dividends and Interest:		**Dividends and Interest:**	
Cash Dividend Credit	1.40	Cash Dividend Credit	1.28
Stock Dividend Credit	16.00	Stock Dividend Credit	8.75
Registered Muni Interest Credit	2.10	Registered Muni Interest Credit	1.60
Registered Corporate Bond Interest Credit	1.40	Registered Corporate Bond Interest Credit	1.28
Dividend Reinvestment:		**Dividend Reinvestment:**	
Dividend Reinvestment	25.00	Dividend Reinvestment	10.00
Reorganizations:		**Reorganizations:**	

[3] For further details concerning MSTC's discount program for primary users, see Securities Exchange Act Release Nos. 31866 (February 17, 1993), 58 FR 11076, and 31867 (February 17, 1993), 58 FR 11079.

[4] Securities Exchange Act Release No. 31866 (February 17, 1993), 58 FR 11076.

[5] Securities Exchange Act Release No. 31867 (February 17, 1993), 58 FR 11079.

[6] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[7] 17 CFR 200.30–3(a)(12).

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY—Continued

[1993 Fee Revision Summary]

Service	Current	Service	Revised
Full Call, Partial Call and Maturities—Registered or Bearer.	26.00	Full Call, Partial Call and Maturities—Registered or Bearer.	no change
Value Charge, Full Call, Partial Call and Maturities—Registered or Bearer.	0.05/$1000	Value Charge, Full Call, Partial Call and Maturities—Registered or Bearer.	0.15/$1000 ($250.00 maximum)
Conversion and Warrants (included in non-mandatory).	35.00/transaction	Conversion and Warrants *	$0.072/share ($28 minimum, $144 maximum)
Depository Delivery Instructions:		**Depository Delivery Instructions:**	
All DDI items	0.45	All DDI items	0.54
Deposits:		**Deposits:**	
Regular Deposits		Regular Deposits	
		Active *	
11:30–4:30	1.75	11:30–4:30	1.54
11:00–11:30	25.00	11:00–11:30	7.75
7:30–11:00	2.75	7:30–11:00	2.35
		Less Active **	
		11:30–4:30	2.49
		11:00–11:30	8.70
		7:30–11:00	3.30
Deposit Surcharge	0.02/100 over $15,000.	Deposit Surcharge	0.00
Deposit Reclaim	20.00	Deposit Reclaim	23.00
Full Legal Deposits		Full Legal Deposits	
1–500	6.50	1–500	no change
501 and over	4.50	501 and over	4.30
Basic Legal Deposits		Basic Legal Deposits	
00:01–10:59 (same day)	4.25	00:01–10:59 (same day)	no change
11:00–11:30	26.50	11:00–11:30	9.25
11:31–24:00 time range (next day credit)	3.25	11:31–24:00 time range (next day credit)	2.67
		Deposit Mail Surcharge (for Agent outside NYC).	0.90/deposit
Reorg Deposit	2.75	Reorg Deposit Surcharge	3.15
Withdrawals:		**Withdrawals:**	
Street Request	12.00	Street Request	22.00
		Certificate Fees	
		Transfer Agent fee is ≤ $3.50	7.55/withdrawal
		Transfer Agent fee is ≥ $3.51	16.20/withdrawal
Manual Pulls	30.00	Manual Pulls	50.00
Transfer Service:		**Transfer Service:**	
Transfers	2.00	Transfers	
		Active *	1.81
		Less Active **	3.46
Direct Mail	3.35	Direct Mail	
		Active *	2.82
		Less Active *	4.74
Check Fee (plus applicable Certificate Fee)	2.50	Check Fee	0.00
		Certificate Fees	
		Transfer Agent fee is ≤ $3.50	5.35/certificate
		Transfer Agent fee is ≥ $3.51	10.75/certificate
Reclamation Transfer	2.75	Reclamation Transfer	0.00
(plus Basic Legal Same Day Re-Deposit fee).	4.25	(same as Basic Legal Same Day Re-Deposit fee).	4.25
Transfer Shipping	1.24 + $0.04/$1,000	Transfer Shipping	$0.90 + $0.04/$1 000
Pledge Loan Program:		**Pledge Loan Program:**	
Pledge and Release movements	0.68	Pledge and Release movements	0.54
Underwriting Issuance:		**Underwriting Issuance:**	
Issuance Fee	400.00	Single CUSIP issues, par value ≤ $1 million	50.00
		Single CUSIP issues, par value ≤ $3 million	125.00
		Single CUSIP issues, par value > $3 million	200.00
		Multiple CUSIP issues, par value ≤ $1 million	100.00
		Multiple CUSIP issues, par value ≤ $3 million	250.00
		Multiple CUSIP issues, par value > $3 million	400.00
		CD's (Certificates of Deposit)	90.00
Position Fee	0.45	Position Fee	0.54
Unit Swingover:		**Unit Swingover:**	
Swingover Instruction	11.00	Swingover Instruction	9.00
Overnight Safekeeping:		**Overnight Safekeeping:**	
Flat fee per issue	6.00		
Nightly fee per certificate	0.75		
		Registered Securities	15.00
		Bearer Securities	28.00

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY—Continued

[1993 Fee Revision Summary]

Service	Current	Service	Revised
Interface:		**Interface:**	
DTC Interface charge	1.00	DTC Interface charge	0.00
Participant Cash Movement:		**Participant Cash Movement:**	
Participant Cash Movement	1.50	Participant Cash Movement	0.54
Communications:		**Communications:**	
Leased Line Charge	362.00	MSTC Leased Line Charge	440.00
Leased equipment (1CRT, 1CTL, 1PRT) from various lease terms and fees.	variable/month	Leased equipment (1CRT, 1CTL, 1PRT) from various lease terms and fees.	400.00/month
On-line Inquiry	0.03	On-line Inquiry	0.085
Limited Access Option		Limited Access Option	
Report retrieval, DOCS, Communique System only.	100.00	Report retrieval, DOCS, Communique System only.	100.00 plus time, character and port charge
Inquiry, Report Retrieval, DOSC, and Communique System.	200.00	Inquiry, Report Retrieval, DOSC, and Communique System.	200.00 plus time, character and port charge
Hard Copy Reports:		**Hard Copy Reports:**	
Hard copy reports (Activity, Net Position, P&S) plus charge for.	10/copy+	Hard copy reports (Activity, Net Position, P&S) plus charge for.	15/copy+
Over 500 page count for each report	0.028/page	Over 500 pages for all reports combined	0.038/page
		All other reports	0.038/page
Hard Copy Input:		**Hard Copy Input:**	
Surcharge for all hard copy input done by MSTC on behalf of Participants.	2.00	Surcharge for all hard copy input done by MSTC on behalf of Participants.	7.00
Audit Confirmation Package:		**Audit Confirmation Package:**	
Participant requested audit confirmation	25.00 plus shipping/handling.	Participant requested audit confirmation (request prior to audit date).	25.00 plus shipping/handling
		Participant requested audit confirmation (request after audit date).	50.00 plus shipping/handling
Shipping:		**Shipping:**	
All couriers except Brinks	Rebill plus $1.00 Midwest handling fee plus insurance.	All couriers except Brinks	Rebill plus 2.00 Midwest handling fee plus insurance
Brinks	Rebill @ $9.95 per package plus $0.03/$1000 value plus $0.18/ounce.	Brinks	no change
Shipments to Transfer Agents	Rebill @ $0.04/$1000 value plus $1.24 handling fee.	Shipments to Transfer Agents	Rebill @ $0.04/$1000 value plus $0.90 handling fee

Notes: G5 Non-mandatory Reorganization will no longer include conversions.
*Active—defined as issues which averaged > 2 transactions on days when transactions occurred during the month.
**Less Active—defined as issues which averaged ≤ 2 transactions on days when transactions occurred during the month.

[FR Doc. 93-11801 Filed 5-18-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32299; File No. SR-PSE-93-01]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Ten-Up Rule

May 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 11, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its Rule 6.86 entitled "Trading Crowd Firm Disseminated Market Quotes" ("Ten-Up Rule") in order to clarify certain rule provisions and to set forth certain policies related to the Rule that are presently employed in practice.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to clarify its Ten-Up Rule by expanding Subsection (b) of Rule 6.86 relating to the identification of orders that are eligible to receive a guaranteed minimum of ten option contracts. In addition, the Exchange proposes to add four new Commentaries under the Rule.

Order Identification

Subsection (b) of Rule 6.86 currently provides that members and member organizations who enter orders for execution on the Options Floor must ascertain the account origin of such orders and provide a notation of the account origin on the order ticket. Under the proposal, such members and member organizations would be required to communicate such account information to the executing member organization. Accordingly, the member or member organization entering the order must indicate to the executing member organization whether the order is on behalf of a customer, firm, market maker, or specialist. However, the exchange believes that such identification already occurs in practice and that no new procedures will be required in entering orders for execution.

The proposal would also set forth the duty of executing floor brokers to inquire personally as to the account origin of each eligible order upon receipt thereof or prior to its execution and to note such information on the subject order ticket.[1] Finally, under the proposal, the executing member organization and the clearing member organization would bear greater responsibility with respect to the proper identification of orders that are executed on behalf of non-members of the Exchange.

Commentary .05

Proposed Commentary .05 sets forth certain types or orders that are subject to the Rule and the extent to which the Rule applies to such orders. The Rule specifically addresses the treatment of combination orders, spread orders, straddle orders, and contingency orders. With respect to combination orders, market makers in a trading crowd would only be responsible for providing an aggregate of ten contracts on one side of the market; however, market makers would be required to provide a depth of ten contracts on both sides of the market for spread and straddle orders.

The proposed Commentary also enumerates the types of contingency orders that are subject to the Rule, i.e., "minimum" orders of ten contracts or less and market non-held, limit not-held, and delta orders that can be executed immediately, and all-or-none orders of ten contracts or less. The types of contingency orders that are not subject to the Rule include, but are not limited to: "minimum" orders for more than ten contracts, buy-writes, all-or-none orders for more than ten contracts, delta orders traded with stock, and contingency orders that have been partly executed.

Moreover, the proposed Commentary provides that in executing contingency orders pursuant to the Rule, the order ticket must be time stamped upon being taken into the trading crowd. The Commentary further states that such orders are entitled to ten contracts on the market disseminated at that time.

Commentary .06

Proposed Commentary .06 provides that market makers must be afforded a "reasonable" opportunity to update their disseminated markets for the execution of consecutive eligible customer orders in options on the same underlying security. The Commentary further provides that such orders shall be executed on a time priority basis so that the order with the earliest time stamp will receive a guaranteed fill of ten contracts.

Commentary .07

Proposed Commentary .07 provides that a floor broker may be held liable for an entire order if such floor broker attempts to solicit a better price than the limit price stipulated on the order ticket and such attempt creates a change in the market that does not result in an immediate execution.

Commentary .08

Proposed Commentary .08 designates those market makers to whom the Order Book Official may, pursuant to current Subsection (d) of the Rule 6.86, allocate the balance of contracts necessary to provide an execution of ten contracts when the response of the members present at the trading post is insufficient to provide a depth of ten contracts. Specifically, such allocations may be made to market makers who are present at the trading post at the time of a call for a market, and, either hold an appointment in the option classes at that trading post or regularly effect transactions in person for their trading accounts at that trading post. In addition, this proposed Commentary provides that market makers who have logged onto the Automatic Execution system but who are not present in the trading crowd will not be eligible for an allocation by the Order Book Official pursuant to Subsection (d) of the Rule.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it facilitates transactions in securities and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] In a modification of existing Commentary .03, the PSE proposes to allow broker-dealer or firm orders (in addition to market maker orders) for less than 10 contracts that are represented at a trading post by a Floor Broker to not be disseminated.

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 June 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-11852 Filed 5-18-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19472; 811-3794]

The International Fund for Institutions

May 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The International Fund for Institutions.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 8, 1993, and was amended on May 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving the 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 June 7, 1993, and should be accompanied by proof of service on the applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Bellevue Park Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware 19809.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504-2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The Complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end, diversified management investment company registered under the Act. On July 7, 1983, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on November 14, 1983. Applicant's initial public offering began on February 16, 1984.

2. On October 29, 1992, applicant's board of trustees adopted resolutions authorizing, upon approval of applicant's shareholders, the liquidation of applicant, the payment of all of applicant's outstanding liabilities and obligations, the distribution of its assets to its shareholders, the filing of the application under section 8(f) of the Act, and the dissolution of applicant under Massachusetts law. The board of trustees determined that it was in the best interests of applicant's shareholders to liquidate the fund because of the effect of applicant's small size on the expenses of operating the fund relative to its income, and applicant's limited ability to further diversify its portfolio and to take advantage of investment opportunities.

3. On November 20, 1992, applicant distributed proxy materials regarding the proposed liquidation to its shareholders. At a special meeting held on December 22, 1992, applicant's shareholders approved the proposal by the board of trustees regarding the proposed liquidation. As of December 30, 1992, applicant had 136,716.065 shares of common stock outstanding. Each share had a net asset value of $7.53.

4. On December 31, 1992, applicant liquidated its assets and, except for certain assets retained by applicant to pay its remaining liabilities, distributed the proceeds to its shareholders on a *pro rata* basis. As of the date of the amended application, applicant had retained assets of approximately $6,909, which consisted of $6,019 in cash and $890 in receivables representing certain dividends and foreign tax credits receivable.

5. Based upon an analysis provided by applicant's officers, applicant's board of trustees concluded that the retained assets would be sufficient to pay applicant's outstanding debts and liabilities, which total $6,518 and consist of $1,518 in accrued operating expenses and $5,000 in accrued liquidation expenses. If the estimate of such liabilities is too low, applicant intends to pay first its liabilities to creditors other than its adviser and administrator and their affiliates. Applicant's board of trustees intends to distribute the proceeds from any assets that remain after satisfaction of all of applicant's obligations and liabilities to its shareholders of record on December 31, 1992, on a *pro rata* basis as soon as practicable after payment in full of applicant's expenses, and, in the case of the foreign tax credits receivable, the date on which such assets are in applicant's possession. Applicant represents that the actual payment dates of the foreign tax credit receivables are unpredictable because they depend on the administrative processing of the particular foreign jurisdictions involved.

6. All expenses in connection with the liquidation, which include professional fees and expenses associated with terminating applicant's registration under the Act and the Securities Act of 1933, terminating applicant's existence under Massachusetts laws and certain other minor expenses, will be paid out of applicant's retained assets as described above.

7. At the time of the application, applicant had no shareholders, and was not a party to any litigation or administrative proceeding. Applicant is not now engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Upon receipt of the requested order, applicant intends to file articles of dissolution with the Massachusetts Secretary of State.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-11854 Filed 5-18-93; 8:45 am]

BILLING CODE 8010-01-M

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[2] 17 CFR 200.30-3(a)(12) (1992).

[Investment Company Act Release No. 19474; 811-6558]

Lancashire Trust; Application

May 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lancashire Trust.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 7, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 7, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 411 108th Avenue NE., Suite 2110, Bellevue, Washington 98004.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a trust under the laws of the Commonwealth of Massachusetts. On February 10, 1992, Applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act and a registration statement on Form N-1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was declared effective on October 15, 1992, and an initial public offering of its shares of beneficial interest commenced on October 16, 1992.[1]

2. On March 11, 1993 each member of the Board of Trustees signed an "Action Taken Without Holding a Meeting of the Board of Trustees" (authorized under article II section 9 of the Applicant's by-laws) calling for a meeting of shareholders and recommending that the Applicant be closed. All trustees signed the Action. On March 12, 1993 applicant held a meeting of shareholders, at which the Trust's sole remaining shareholder, an affiliate of applicant's investment adviser, voted to liquidate the Trust and distribute all assets. The remaining shareholder also agreed to pay all expenses of liquidation.

3. On March 23, 1993, 12,137 shares of beneficial interest were outstanding with a net asset value of $12.01 per share, for a total net asset value of $145,823. On this date, Applicant distributed $139,820 to its sole remaining shareholder. When this application was filed, Applicant still had assets of $6,003, representing unused fidelity bond premium and a fidelity bond deposit that will be distributed to the sole shareholder as soon as possible.

4. On April 6, 1993 a Letter of Termination was filed with the Massachusetts Secretary of State.

5. As of the date of this application, Applicant has no debts or liabilities and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in, nor proposes to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-11853 Filed 5-18-93; 8:45 am]

BILLING CODE 8010-01-M

[1] In a letter dated April 6, 1993 Thomas D. Tays, Secretary of Applicant, stated that only one shareholder made a purchase of Applicant's shares in the public offering. That shareholder accepted a recision offer on December 28, 1992 and his money was returned. There have been no offers and no sales since that time.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 2586]

Florida; Amendment #5; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby reopened and the deadline for filing applications for physical and economic injury damage is extended to July 1, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-11725 Filed 5-18-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2642]

Iowa (and Contiguous Counties in Illinois); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 26, 1993, and notification by the Federal Emergency Management Agency of an amendment dated May 2, I find that the Counties of Benton, Black Hawk, Buchanan, Butler, Linn, Muscatine, Tama, and Webster in the State of Iowa constitute a disaster area as a result of damages caused by severe storms and flooding which occurred March 26 through April 12, 1993. Applications for loans for physical damage may be filed until the close of business on June 25, 1993, and for loans for economic injury until the close of business on January 26, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Fort Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Boone, Bremer, Calhoun, Cedar, Cerro Gordo, Chickasaw, Clayton, Delaware, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hardin, Humbold, Iowa, Jasper, Johnson, Jones, Louisa, Marshall, Pocahontas, Powesheik, Scott, and Wright in the State of Iowa and Rock Island County in the State of Illinois may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625

	Percent
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 264206 and for economic injury the numbers are 789300 for Iowa and 789600 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-11726 Filed 5-18-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 18, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulations(s) affected	Nature of exemptions thereof
11003-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.316	To authorize the transportation of methane, refrigerated liquid, classed as Division 2.1 in DOT specification 4L insulated welded cylinder with a design service temperature of minus 260 degreas F or colder. (Mode 1.)
11004-N	Degussa Corporation, Ridgefied Park, NJ.	49 CFR 173.240	To authorize the shipment of paraformaldehyde, classed as Division 4.1 in flexible intermediate bulk bags (Specification 13H3). (Modes 1, 2.)
11005-N	Pressure Technology, Inc., Hanover, MD.	49 CFR 173.302(a), 173.304(a)(d), 175.3.	To authorize the manufacture, mark and sell of non-DOT specification fiber reinforced plastic full composite cylinders designed in accordance with DOT-FRP-1 standard for use in transporting various commodities classed as Division 2.1 and 2.2. (Modes 1, 2, 3, 4, 5.)
11007-N	Noma Outdoor Products, Jackson, TN.	49 CFR 173.220	To authorize the shipment of equipment with batteries installed without required markings. (Modes 1, 2.)
11008-N	Jupiter Chemicals, Inc., Houston, TX.	49 CFR 173.29(a) (c) (2)	To authorize a one-time shipment of a DOT Specification 111A10OW3 tank car, containing a chlorine residue, which is overdue for valve testing. (Mode 2.)
11009-N	A.E. Staley Manufacturing Company, Decatur, IL.	49 CFR 173.29(a)(c)(2)	To authorize a one-time shipment of A DOT Specification 105A50OW tank car, containing a chlorine residue, which is overdue for valve testing. (Mode 2.)
11012-N	Martin Marietta, Denver, CO	49 CFR 173.336	To authorize shipment of a limited quantity of dinitrogen tetroxide, liquefied, classed as Division 2.3 in a specially designed composite package. (Modes 1, 3.)
11013N-	Hercules Incorporated, Wilmington, DE.	49 CFR 173.225(c)	To authorize the transportation of Organic Peroxide, Type D, liquid, classed as Division 5.2, in 55 gallon 1H1 plastic drums. (Mode 1.)
11014-N	Hercules Incorporated, Wilmington, DE.	49 CFR 173.225(c)	To authorize the transportation of Organic Peroxide, Type D, solid, classed as Division 5.2, in DOT-57 portable tanks. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 12, 1993.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93-11798 Filed 5-18-93; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 3, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of Exemption
3216-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE (See Footnote 1)	3216
9066-X	Inflation Systems, Inc., LaGrange, GA (See Footnote 2)	9066
9781-X	Chlorine Institute, Inc., Washington, DC (See Footnote 3)	9781
9977-X	Hercules Incorporated, Wilmington, DE (See Footnote 4)	9977
10336-X	Morton International, Inc., Ogden, UT (See Footnote 5)	10336
10916-X	Nalco Chemical Company, Naperville, IL (See Footnote 6)	10916

[1] To modify exemption to provide for shipment of trifluoromethane, classed as Division 2.2 in DOT Specification 110A2000W tank car.
[2] To modify exemption to provide for shipment of scrap airbag inflators in DOT Specification 17H steel drums, classed as Division 4.1.
[3] To modify exemption to eliminate the requirement to hydrostatically retest non-DOT specification salvage cylinders every two years.
[4] To modify exemption to provide for an additional rocket motor transported in a propulsive state, with igniters installed Classed as Division 1.3.
[5] To modify exemption to provide for an increase of 30 pounds net weight per 3.5 gallon steel drum of propellant explosives transported as Division 1.3 material.
[6] To modify exemption to reduce height of required exemption markings on non-DOT 57 portable tanks.

Application No.	Applicant	Parties to exemption
3667-P	Petro Source Partners, Ltd., Dumas, TX	3667
4850-P	High Energy International, Fort Worth, TX	4850
6309-P	Fomo Products, Inc., Norton, OH	6309
6626-P	Holox, Ltd., Atlanta, GA	6626
6691-P	CryoGas Corp., Syracuse, NY	6691
7770-P	Produven Caracas, Venezuela	7770
7891-P	Nite Lite Company, Clarksville, AR	7891
8035-P	Young Wireline Service, Inc., Charleston, WV	8035
8151-P	Ropak Corporation, Fullerton, CA	8151
8273-P	Takata Moses Lake, Inc., Moses Lake, WA	8273
8451-P	High Energy International Fort Worth, TX	8451
8453-P	Kesco, Inc., Butler, PA	8453
8554-P	Kesco, Inc., Butler, PA	8554
8554-P	Explosives Supply, Inc., Ringwood, NJ	8554
8554-P	Farmers Supply & Explosives, Inc., Barbourville, KY	8554
8845-P	Young Wireline Service, Inc., Charleston, WV	8845
8958-P	High Energy International, Fort Worth, TX	8958
8988-P	High Energy International, Fort Worth, TX	8988
9662-P	Young Wireline Service, Inc., Charleston, WV	9262
9275-P	Emo Laszlo, Ltd., Roanoke, VA	9275
9275-P	Noville Essential Oil Company, Inc., South Plainfield, NJ	9275
9281-P	High Energy International, Forth Worth, TX	9281
9694-P	Advance Chemical Distribution, Inc., Sand Springs, OK	9694
9723-P	Environmental Transport Systems, Jamestown, ND	9723
9769-P	Tri-State Environmental, Inc., Romulus, MI	9769
10165-P	Arizona Department of Commerce, Phoenix, AZ	10165

Application No.	Applicant	Parties to exemption
10247–P	G.C. Industries, Inc., Fremont, CA	10247
10346–P	St. Joe Forest Products Company, Port St. Joe, FL	10346
10695–P	AMSCO International, Inc., Erie, PA	10695
10717–P	General Chemical Corporation, Parsippany, NJ	10717
10795–P	Niagara Mohawk Power Corporation (NM), Syracuse, NY	10795
10845–P	LCP Chemicals, Linden, NJ	10845
10845–P	ASHTA Chemicals, Inc., Ashtabula, OH	10845
10917–P	ABB Advanced Battery Systems, Inc., Mississauga, Ontario, CN	10917
10917–P	Hughes Aircraft Company, Torrance, CA	10917

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 12, 1993.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–11799 Filed 5–18–93; 8:45 am]

BILLING CODE 4910–60–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 95
Wednesday, May 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Wednesday, May 26, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, May 26

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Randall C. Orem, D.O.—Commission Action on Settlement Agreement Approved in LBP-92-18 (Tentative)

(Contact: Steve Burns, 301-504-2184)

b. Sacramento Municipal Utility District's Motion for Reconsideration of CLI-93-03 (Rancho Seco) (Tentative)

(Contact: Margaret Doane, 301-504-2001)

2:00 p.m.

Briefing on Status of Efforts for Risk Harmonization (Public Meeting)

(Contact: Richard Bangart, 301-504-3340)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: May 14, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-11986 Filed 5-17-93 12:02 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 58, No. 95
Wednesday, May 19, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 93-010N]

FSIS Proposed Strategic Plan; Public Hearings and Request for Comments

Correction

In notice document 93-11435 beginning on page 28389 in the issue of Thursday, May 13, 1993, make the following correction:

On page 28390, in the second column, in the table, in the third column (FSIS hearing contact), in the second entry, the phone number should read "(215) 597-4217."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 920491-2339]

RIN 0693-AB01

Approval of Federal Information Processing (FIPS) 151-2, Portable Operating System Interface (POSIX)—System Application Program Interface [C Language]

Correction

In notice document 93-11137 beginning on page 27995 in the issue of Wednesday, May 12, 1993, make the following corrections:

On page 27996, in the third column:

1. In paragraph f., in the second line from the bottom, "1013-" should read "1031-".

2. In paragraph h., in the second line from the bottom, "<unisted.h>" should read "<unistd.h>".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

48 CFR Part 509

[APD 2800.12A, CHGE 45]

General Services Administration Acquisition Regulation; Administrative Records for Debarment and Suspension

Correction

In rule document 93-10689 beginning on page 26919 in the issue of Thursday, May 6, 1993, make the following correction:

509.407-3 [Corrected]

1. On page 26920, in the second column, in section 509.407-3(b)(7)(iii), in the fourth line, "of" should read "for".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1994

Correction

In notice document 93-7224 beginning on page 16685 in the issue of Tuesday, March 30, 1993, make the following corrections:

1. On page 16686, in the table, under Basic support, in the California entry, "5,532,464" should read "5,732,464", and in the West Virginia entry, "756,106" should read "756,016".

2. On the same page, in the same table, under Protection and advocacy, in the Wisconsin entry, "339,820" should read "399,820".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4210-06; GP3-205; OR-48631]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 93-10180 beginning on page 26153 in the issue of Friday, April 30, 1993, on page 26154, in the 1st column, in land description T. 36 S., R. 2 W., in the 12th line from the end, "2.00 feet" should read "20.00 feet".

BILLING CODE 1505-01-D

federal register

Wednesday
May 19, 1993

Part II

Department of Health and Human Services

Administration on Aging

Fiscal Year 1993 Program Announcement; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[(Program Announcement No. AOA–93–1)]

Fiscal Year 1993 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building activities.

SUMMARY: The Administration on Aging (AoA) announces its Fiscal Year (FY) 1993 Discretionary Funds Program (DFP) of knowledge building, program innovation and development, information dissemination, training, technical assistance, and related capacity-building efforts. The FY 1993 DFP has a dual emphasis: (1) Developing and strengthening systems of home and community based long term care for older Americans who are at risk of losing their independence; and (2) responding to the mandates contained in the Amendments to the Older Americans Act of 1992, which concentrate discretionary funding resources on several aging program areas and on responding to the needs of vulnerable older population groups. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89–73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following Part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of the priority area project activities described herein.

DATES: This announcement has two deadlines for applications, depending upon the particular priority area under which the application is submitted for competitive review and funding. For the first set of priority areas, the deadline for applications is *July 19, 1993*. For the second set of priority areas, the application deadline is *September 10, 1993*.

ADDRESSES: Application receipt point: U.S. Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–93–1.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4278, Washington, DC 20201, telephone (202) 619–0441.

SUPPLEMENTARY INFORMATION:

Part I—Background

A. Program Priorities of the Administration on Aging

The size, the diversity, and the growth of our older population constitute the demographic realities of an aging society. Today, there are 43 million people over the age of 60; three million older persons are age 85 or older. By the year 2030, according to U.S. Bureau of the Census projections, 83 million people will be age 60 or over; eight million of these elders will be age 85 or older. Older women now outnumber older men by three to two. That ratio reaches five older women for every two older men among those 85 and over, a population which faces a serious risk not just of chronic illness and disability but of not having a caregiver at home to provide much needed assistance. The changing demographics of America's population are impacting every segment of our society. The public and private sectors at national, State, and local levels are influenced in important ways by the increasing numbers of older persons, their diversity, their resources, and their needs.

Much of the change taking place in our older population is positive. Today, many older people are healthier, better educated and more likely to live fuller, independent life styles than their counterparts of a generation or two ago. Older persons are a diverse resource, most continuing to make substantial contributions to their families, their communities, and their nation. A 1991 report found that more than 15.5 million older persons served as volunteers in communities nationwide. Older persons make up a great number of the volunteers we depend upon for assistance not only to other older persons, but to the intergenerational programs and community service programs that keep our communities viable.

Media presentations, public attention, and policy debates have not often focused on the diverse resources and contributions of the nation's elderly. Rather, they have given rise to widespread concern over future economic, political and social trends identified with the graying of America. That concern reaches beyond the dramatic increase in the numbers of older people today and is heightened by the prospect of the aging of the baby-boom generations in the early decades of the 21st century. The fact is, sizeable numbers of older persons, now and in the future, will depend upon us for assistance in the form of economic support, long term care, and social and supportive services. As a nation we face important decisions about the care of our vulnerable elderly, decisions of special relevance to those elderly who are frail and need long term care, to those who are poor, to older Americans who live in rural areas, and to members of minority groups.

Through this Program Announcement, the Administration on Aging is focusing Title IV Discretionary Funds support on program initiatives aimed at developing and strengthening systems of home and community based long term care for older Americans at risk. At the national level, long term care is a core issue in the current debate on health care reform. There is renewed emphasis on improving coordination of current Federal, State, and local programs. At the State and local levels, efforts have focused on developing more responsive and cost-effective systems of care, with a complementary emphasis on community based approaches. State and Area Agencies on Aging have been in the forefront in improving the access of older persons to a broad array of home and community services.

The second major area of emphasis in this Title IV Discretionary Funds Program Announcement derives from the Amendments to the Older Americans Act of 1992, which concentrate discretionary funding resources on making specific aging programs more effective and on better serving vulnerable population groups. The priority program areas include, in addition to long term care, housing, transportation, pension rights, elder abuse, multigenerational and intergenerational programs, and career

preparation for the field of aging. The vulnerable elderly groups include (besides the chronically impaired elderly) older persons living in rural areas, Native American Elders and other minority elderly, and older individuals with developmental disabilities.

B. The AoA Discretionary Funds Program

The Discretionary Funds Program authorized by Title IV of the Older Americans Act constitutes the major research, demonstration, training, and development effort of the Administration on Aging. The Title IV mandate is aimed, generally, at building knowledge, developing innovative model programs, and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary projects are focused on:

- Advancing our knowledge and understanding of current program and policy issues, such as community and in-home long term care service systems and programs, significant to the well-being of the older population;
- Improving the effectiveness of Older Americans Act programs by testing new models, systems, and approaches for better providing and delivering services to older persons; and
- Providing training, technical assistance, and information that will increase our ability to serve older Americans with skill, care, and compassion.

C. Coordination With Other Federal Agencies

Under the Older Americans Act, the Administration on Aging (AoA) functions as a focal point within the Federal Government for aging-related concerns. In that capacity, AoA advises the Secretary of Health and Human Services on matters affecting older Americans and provides consultation and information to units across the Federal Government on the characteristics, circumstances, and needs of older persons. AoA has a strong commitment to working with other Federal agencies on policy and program development in issue areas of importance to older Americans. To carry out its national level program and advocacy responsibilities, AoA places major emphasis on developing collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Federal Interagency Agreements to better serve older Americans, combining our resources with those of the Departments of Transportation, Housing and Urban Development, Labor, and Education, the Farmers Home Administration, and ACTION, as well as with other agencies within the Department of Health and Human Services, such as the Social Security Administration, the Health Care Financing Administration, the Administration for Children and Families, and the National Institute on Aging.

These interagency collaborations represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence. AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallel a number of the priority areas in this Discretionary Funds Program Announcement.

D. Dissemination of Project Results and Products

In keeping with the provisions of the Older Americans Act, all projects funded under Title IV are required to undertake vigorous steps to disseminate the results and products of their projects to appropriate audiences involved in promoting the well being of older persons. As described in Part III (section I.2) of this announcement, the most effective dissemination begins at the moment a project is conceptualized and includes involvement of potential user audiences throughout the project, particularly in the design of products. Applicants are also encouraged to consider the development, as appropriate, of short products suitable for widespread dissemination to older persons, their families and other caregivers, and practitioners who serve older persons. Advice on ways to maximize the utilization of a proposed project may be obtained by contacting Saadia Greenberg or Irma Tetzloff at the AoA Division of Dissemination and Utilization at (202) 619–0441. Applicants may also be interested in obtaining a publication entitled, *Dissemination by Design*, which may be requested by calling the above number.

E. Technical Assistance Workshops for Prospective Applicants

Workshops will be held in Washington, DC and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the workshop you are interested in attending.

City	AoA contact person(s)
Washington, DC.	Alfred Duncker/Saadia Greenberg, Albert Byrd/Irma Tetzloff, (202) 619–0441.
Boston, Massachusetts.	Thomas Hooker, (617) 565–1158.
New York, New York.	Judith Rackmill, (212) 264–2976.
Philadelphia, Pennsylvania.	Paul E. Ertel, Jr., (215) 596–6891.
Atlanta, Georgia.	Franklin Nicholson, (404) 331–5900.
Chicago, Illinois.	Eli Lipschultz, (312) 353–3141.
Dallas, Texas.	John Diaz, (214) 767–2971.
Kansas City, Missouri.	Larry Brewster, (816) 374–6015.
Denver, Colorado.	Percy Devine, (303) 844–2951.
San Francisco, California.	Howard Williams, (415) 556–6003.
Seattle, Washington.	Chisato Kawabori, (206) 553–5341.

F. Statutory Authority

The statutory authority for awards made under the AoA Discretionary Funds Program is contained in Title II and Title IV of the Older Americans Act, (42 U.S.C. 3001 et seq.), as amended by the Older American Act Amendments of 1992, Public Law 102–375, September 30, 1992.

G. Public Comments on This Announcement

AoA invites comments on this Discretionary Funds Program Announcement. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

Part II—Priority Areas

Part II of the Discretionary Funds Program (DFP) Announcement sets forth the priority areas under which applications will be considered for funding by the Administration on Aging. This part also provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions

regarding eligibility, costs, and duration may be found under the individual priority areas.

For the convenience of prospective applicants, a listing of the DFP priority areas is provided in two sections: Section A sets forth those priority areas which have a deadline for applications of *July 19, 1993*—applications that compete and are approved by AoA for funding under these priority areas will have start-up dates as early as September 1, 1993; and Section B sets forth those priority areas with an application deadline of *September 10, 1993*—applications that compete and are approved by AoA for funding under these priority areas will have start-up dates as early as December 1, 1993. Following the listing, each of the priority areas is described in detail.

Applications must be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

A. Eligible Applicants

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program Announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. Applications from individuals cannot be considered because they are ineligible to receive a grant award under the applicable provisions of Title II and Title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but they may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this program announcement that is not now a DHHS grantee should include, with its application, Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without proof of its status.

B. Project Costs and Duration

Under each priority area, AoA has estimated the number of projects to be funded and has provided guidelines regarding both the duration of those projects and the anticipated Federal share of project costs. Because applications are reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to the guidelines.

C. Projects Funded Under Cooperative Agreement Awards

Under certain priority areas, in particular those identified with the establishment of Resource Centers, the Administration on Aging (AoA) has indicated it will use the mechanism of the cooperative agreement in making awards. Under the cooperative agreement mechanism, AoA and each Center (or project) will share the responsibility for managing that Center/project.

The Center/project will have the primary responsibility for developing and implementing the activities of the Center. AoA will join with the Center in deciding the major issues to be addressed by the Center; use periodic briefings and ongoing consultation to share with the Center its knowledge of the issues being addressed by the Center as well as information about relevant activities being undertaken by others; provide feedback to the Center about the usefulness to the field of its written products and information sharing activities; and participate as much as possible in the deliberations of the Center advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed by both AoA and the prospective grantee prior to the issuance of the award.

D. List of Priority Areas

Section A: Application Deadline: July 19, 1993

I. Home and Community Based Long Term Care for At-Risk Elderly

1.1 National Resource Centers for Long Term Care
1.2 National Long Term Care Ombudsman Resource Center
1.3 Special Projects in Comprehensive Long Term Care

II. More Effective Aging Programs and Better Services to Older Americans

2.1 National Center on Elder Abuse
2.2 National Resource Centers for Older Indians, Alaska Natives, and Native Hawaiians
2.3 Training and Technical Assistance for Title VI Grantees
2.4 National Leadership Institute on Aging
2.5 Senior Transportation Demonstration Program Grants
2.6 Demonstration Program for Older Individuals With Developmental Disabilities
2.7 Demonstration Projects for Intergenerational and Multigenerational Activities
2.8 Rural Mental Health Care Training for Service Providers
2.9 Pension Information and Counseling Demonstration Program
2.10 Music Therapy, Art Therapy, and Dance-Movement Therapy Projects
2.10.1 Music/Art/Dance-Movement/Therapy Research and Demonstration Projects
2.10.2 Education, Training, and Information Dissemination Projects for Music/Art/Dance-Movement Therapists and the Aging Network
2.11 AoA Dissemination Projects

Section B: Application Deadline: September 10, 1993

III. More Effective Aging Programs and Better Services to Older Americans

3.1 Career Preparation, Education, and Training for the Field of Aging
3.1.1 Gerontology Training Programs in Institutions of Higher Education With High Minority Student Enrollment
3.1.2 Faculty and Curriculum Program Development in Gerontology
3.1.3 Gerontology Training Program Development in Two-Year Academic Institutions
3.1.4 Research and Technology: Innovation in Gerontological Education and Training
3.2 Supportive Services in Federally Assisted Housing Demonstration Projects
3.3 Housing Demonstration Program
3.3.1 Housing Ombudsman Demonstration Program
3.3.2 Foreclosure and Eviction Assistance and Relief Services Demonstration Program
3.4 Statewide Legal Hotlines for Older Americans
3.5 Minority Management Training Program Projects

Priority Area Descriptions

Section A: Application Deadline: July 19, 1993

I. Home and Community Based Long Term Care for At-Risk Elderly

1.1 National Resource Centers for Long Term Care

Pursuant to Section 407 of the Older Americans Act Amendments of 1992—Special Projects in Comprehensive Long Term Care, the Administration on Aging (AoA) is soliciting applications to establish and operate National Resource Centers for Long Term Care. The Centers will be responsible for conducting research, disseminating information, and providing training and technical assistance aimed at improving national, State, and local programs for the provision of home and community based long term care. The organizational and operational framework proposed for the new National Resource Centers for Long Term Care should reflect the applicant's awareness and understanding of the experience and accomplishments of earlier Long Term Care Centers and Institutes that have been supported by AoA.

During the past decade, States and localities have begun to completely restructure their long term care

programs and services. As the focus of care has shifted away from institutional settings, State and Area Agencies on Aging are taking the initiative to develop and expand community based systems for long term care. The goal of these coordinated delivery systems is to improve older and disabled persons' access to a broad array of individualized community services so that they can maintain their independence and remain in their homes and communities as long as possible.

AoA is interested in supporting Long Term Care National Resource Centers to assist in the development and expansion of effective home and community based long term care systems in this country. Within this systems development mission, each applicant shall propose to concentrate on one or more specialty area(s). In selecting subject area specialties, the applicant should consider those listed in Section 407 of the 1992 Older Americans Act Amendments, as well as others included in the following listing:

- Development of an infrastructure for community based long term care systems;
- Client assessment and case management;
- Data collection and analysis;
- Alzheimer's disease and related dementias and other cognitive impairments;
- Home modification and supportive services to enable older individuals to remain in their homes;
- Consolidation and coordination of services;
- Linkages between acute care, rehabilitative services, and long-term care facilities and providers;
- Decision making and bioethics;
- Supply, training and quality of long term care personnel, including those who provide rehabilitative services;
- Rural issues, including barriers to access services;
- Chronic mental illness; and
- Populations with greatest social need and/or populations with greatest economic need, with particular attention to low-income minorities.

All Centers must undertake the following activities on a national scope:

1. Training and technical assistance within their specialty area(s) to help agencies in the Aging Network, and other organizations and agencies working in the field of long term care, on policy and practice issues through such means as phone consultation, written products and materials, teleconferencing, workshops, and conference presentations;

2. Information dissemination that will result in effective sharing of the latest thinking, methods and findings with State Agencies on Aging, Area Agencies on Aging, service providers, researchers, educators, and the public; and

3. Research and development oriented toward results and products which have practical application and immediate use to those working in long term care, e.g., an analysis of key issues of concern relative to a particular long term care subject; the development and/or modeling of a useful instrument or tool; preparation of educational, practice, and technical assistance materials.

Each National Resource Center must undertake all three of these activities as they relate to its specialty area(s). Center awards are not intended for the support of basic research projects or professional academic training.

Any public or nonprofit agency, organization or institution is eligible to apply under this priority area. However, in order to merit serious consideration for a Resource Center award, an applicant must demonstrate that it has (1) extensive knowledge and experience in the proposed specialty area(s); (2) a record of relevant achievement in the proposed specialty area(s); and (3) the requisite organizational capability to carry out the activities of a Resource Center on a nationwide scale. Each Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position.

Organizations and institutions which now receive funding by AoA under National Eldercare Institute on Long Term Care grants are eligible to apply. However, AoA will not provide funding to the same organization or institution for similar efforts. Therefore, should they be successful in this National Resource Centers for Long Term Care competition, that grant award will replace any further funding support for that organization/institution under a National Eldercare Institute on Long Term Care grant.

AoA intends to fund approximately four (4) National Resource Centers on Long Term Care through Cooperative Agreement awards for an estimated project period of four (4) years. Because of the particular difficulties in providing long term care in rural areas, one new Resource Center will be devoted to long term care issues affecting the rural elderly. The Federal share of Center project costs is expected to range from $350,000 to $400,000 per year, depending on the scale of the effort proposed by the applicant and approved by AoA.

Applications for continuation funding of the Center beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government. Applicants must indicate their understanding of the financial limits of support as well as how they will seek alternative sources of support during and beyond the four year project period.

1.2 National Long Term Care Ombudsman Resource Center

In response to the legislative mandate set forth in Section 202(b)(2) of the 1992 Amendments, which amends the Older Americans Act by adding Section 202(a)(21), AoA is soliciting applications under this priority area to establish a National Long Term Care Ombudsman Resource Center. The overall purpose of the Center is to act as a resource for policy analysis on, and the more effective organization and operation of, Federal, State, and local long term care ombudsman programs. Specific functions of the Center, pertaining to research and analysis, training, technical assistance, information dissemination, and the establishment of a national ombudsman volunteer recruitment effort, are prescribed by the 1992 Amendments and discussed further in this priority area.

The Long Term Care Ombudsman program reflects a concern about the quality of life and care of older persons in long term care facilities. Residential long term care facilities or nursing homes, and board and care homes, provide care to the most chronically ill, to the most physically and mentally impaired elderly, and to those least likely to advocate on their own behalf. The nationwide network of fifty-two State ombudsman programs involves more than 1,000 paid staff and 9,000 volunteers who serve 2 million residents of long term care facilities. In Fiscal Year 1991, nationwide, State Ombudsman programs handled 174,284 complaints (76% in nursing homes, 17% in board and care homes).

Each State Long Term Care Ombudsman program is responsible for the investigation and resolution of complaints made by, or on behalf of, residents in long term care facilities, including board and care facilities. Complaints relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees).

The changing scope and greater responsibilities of the State Long Term Care Ombudsman programs were recognized by the Congress in its establishment of a new State Long Term Care Ombudsman Program under Title VII of the Older Americans Act. The Center will provide knowledge building, training, technical assistance, and other resources to State Long Term Care Program agencies based on a full understanding of Title VII and the challenges facing AoA and the network of State and Local Ombudsman programs in serving vulnerable older persons.

Ombudsman programs are also responsible for analyzing and monitoring the development and implementation of Federal, State, and local laws, regulations, and policies which affect long term care residents and for providing recommendations for resolving issues related to the care of older persons in long term care facilities. The ongoing concern about the quality of life and the quality of care of older persons in long term care facilities is reflected in the emphasis of the new Title VII of the Older Americans Act on the protection of the rights of vulnerable elderly. The Center is expected to address issues related to the protection of elder rights as set forth in Title VII of the Older Americans Act, with particular attention to the operation of Ombudsman programs, such as elder abuse, neglect, exploitation, and legal services.

Several national events and developments have called attention to the problem of elder abuse in institutional settings, including Congressional hearings and reports, and activities undertaken by the Department of Health and Human Services (DHHS). In 1985, the U.S. House Select Committee on Aging, exploring the victimization of institutionalized elderly and using state ombudsman estimates, issued a report that indicated perhaps 15% of residents may be physically abused, 40% psychologically abused, 35% medically neglected and many more denied basic rights, such as privacy (45%) and freedom of movement (25%). In 1990, the DHHS Office of the Inspector General released a report entitled "Resident Abuse in Nursing Homes." According to the report:

(1) There is widespread abuse in nursing homes;

(2) Reporting systems for abuse complaints involving nursing home residents are inadequate, and;

(3) State and Federal activities to prevent abuse of nursing home residents need strengthening.

In order to carry out their many responsibilities, Ombudsman programs must recruit, train, and retain both skilled professional staff and dedicated volunteers. The Center is expected to support the development and effective operation of Long Term Care Ombudsman programs across the nation and within each State through performing information dissemination, training, technical assistance, analysis, and short term research.

The Center should address a full range of subjects related to the operation of State and local Long Term Care Ombudsman programs. Such subjects may include, but are not limited to:

- Trends of State program development;
- Systems changes needed to improve State programs;
- Program management and reporting issues;
- Coordination of State and/or local service systems, ombudsman, aging services, adult protective services, legal services, licensure and certification agencies, Medicaid fraud investigation units, law enforcement, and health and welfare agencies.
- Linkages between the Ombudsman program and programs administered by the Health Care Financing Administrations, including the ombudsman role in the survey process;
- Roles and activities of ombudsman programs in addressing institutional abuse, such as improvement of State and community programs to prevent, identify, report, and resolve elder abuse cases through coordinated ombudsman, protective, social, medical, legal, and enforcement services;
- Best practices related to frequent and regular community involvement with long term care facilities;
- Public awareness of the rights and protections for institutional residents provided by federal legislation and the role of long term care ombudsman;
- State training programs to increase the professional expertise of ombudsman personnel;
- Best practices designed to recruit, train, and sustain (a) qualified personnel, and (b) volunteer ombudsman programs;
- Analysis of correlates/causes of elder abuse in institutional settings such as staff capabilities, physical and financial resources, the presence or lack of a family/informal support network for the resident, the integration of the nursing home with the community, and the institution's record of compliance with regulatory standards;
- Identification and analysis of Federal legislation and regulations which impact on the role and function of Ombudsman programs.

Public and private nonprofit organizations, institutions and agencies are eligible to apply under this priority area. Center applicants must demonstrate a strong knowledge base related to the program issues covered by the Amendments to the Older Americans Act of 1992, Title VII, that impact on the operation of Ombudsman programs. Applicants should demonstrate nationwide experience in working with national, State, and local organizations actively involved in long term care ombudsman program issues. The Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position.

Organizations and institutions which now receive funding by AoA under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant are eligible to apply. However, AoA will not provide funding to the same organization or institution for similar efforts. Therefore, should they be successful in this National Long Term Care Ombudsman Resource Center competition, that grant award will replace any further funding support for that organization/institution under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant.

AoA intends to fund the National Long Term Care Ombudsman Resource Center through a Cooperative Agreement award for an estimated project period of four (4) years. The Federal share of project costs is expected to range from $400,000 to $500,000 per year depending upon the scale of the effort proposed by the applicant and approved by AoA.

Applications for continuation funding of the Center beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government.

1.3 Special Projects in Comprehensive Long Term Care

Consistent with Section 407—Special Projects in Comprehensive Long Term Care, as enacted by the Older Americans Act Amendments of 1992, the Administration on Aging (AoA) is soliciting applications for demonstration projects to improve the delivery of long term care to the at-risk elderly. The findings, results, and

products of these projects are expected to advance significantly our capacity to develop and implement comprehensive systems of home and community based long term care.

It is well documented that at-risk older persons prefer to remain in their homes and communities rather than be institutionalized. In recent years, States and localities have been in the forefront of efforts to expand home and community based services, financing them through a mix of resources, including State general revenues, Medicaid State plan services, Medicaid Home and Community Based Waivers, Social Service Block Grants, Older Americans Act funds, and local governmental monies. While these efforts are significant in terms of enhancing the delivery of home and community services to older persons, many problems still exist with the current systems of care at the State and local levels.

The purpose of this priority area is to demonstrate State and local approaches that improve or build upon established systems of home and community based care or assist in the development of new systems. The expected outcomes are tested methodologies that State Agencies on Aging, Area Agencies on Aging, and others may use to improve home and community based systems for older persons. As required by Section 407, applications shall contain:

A. Information describing the problems in the delivery of long term care services in the State or local area to be served, including:

- Duplication of functions at the State and local levels in the delivery of long term care;
- Fragmentation of long term care systems, especially in coordinating services for populations of older individuals and other populations;
- Barriers to access for populations with greatest social need and populations with greatest economic need, including minorities and residents of rural areas;
- Lack of financing for long term care services;
- Lack of availability of adequately trained personnel to provide such services; and
- Lack of chronic care services (including rehabilitation services) that promote restoration, maintenance, or improvement of function in older individuals.

B. A plan to address the problems described.

C. Information describing the methods to be used in coordinating the proposed project with appropriate State Agencies on Aging, Area Agencies on Aging, and service providers.

In addition, applications should be based on knowledge of (1) existing State and local programs and (2) results of pertinent AoA and other agency supported research and demonstration projects. Applications should plan on utilizing successfully tested policies, programs, procedures and materials. Applications also should contain an evaluation component that effectively measures project outcomes and a dissemination effort to ensure that project results will be distributed to State Agencies on Aging, Area Agencies on Aging, and other relevant public and private agencies and organizations.

Eligible organizations include State Agencies on Aging and, in consultation with State Agencies on Aging, Area Agencies on Aging, institutions of higher education, and other public agencies and nonprofit private organizations. In awarding funds under this priority area, the Assistant Secretary for Aging will give preference to entities that demonstrate:

(1) Adequate State standards have been developed to ensure the quality of services proposed; and

(2) A commitment to carry out programs with State agencies responsible for the administration of titles XIX and XX of the Social Security Act.

It is expected that approximately ten (10) projects will be funded under this priority area with a project period of up to two (2) years and an approximate Federal share of $100,000 per project, per year. Title IV awards may not be used to pay for direct services that are eligible for reimbursement under Titles XVIII, XIX, or XX of the Social Security Act.

Section A: Application Deadline: July 19, 1993

II. More Effective Aging Programs and Better Served Older Americans

2.1 National Center on Elder Abuse

In response to the legislative mandate of the Amendments to the Older Americans Act of 1992, Section 202(d)(1), AoA solicits applications to establish a National Center on Elder Abuse. The functions of the Center, as specified by the Amendments and described in more detail below, include research, dissemination of research results and training materials, an information clearinghouse, and technical assistance.

Evidence from several quarters suggests that the number of older persons who are abused, exploited, and neglected is cause for public concern. The Subcommittee on Health and Long Term Care of the U.S. House of Representatives Select Committee on Aging estimated that, in 1989, approximately 1.5 million older Americans were victims of abuse in their own homes—an increase of 50% since 1980. The National Aging Resource Center on Elder Abuse stated that the number of reported cases is steadily increasing and estimated that in Fiscal Year 1991, 1.57 million elders were maltreated by others or were self-neglecting.

The recently enacted Title VII of the Older Americans Act, with its focus on elder rights, elder abuse, and ombudsman activities, calls attention to the problem of elder abuse, neglect, and exploitation at home and in institutional settings and stresses the need to take coordinated action on behalf of those elderly who are least able to advocate for themselves.

The Center will be responsible for carrying out the following activities:

(A) Perform clearinghouse functions by providing information about best practices in the organization, planning, and delivery of services by all levels of government and by the private sector to combat elder abuse;

(B) Compile, publish, and disseminate training materials for personnel working in the field; prepare and disseminate, periodically, a synthesis of recent research on elder abuse, neglect, and exploitation;

(C) Provide training and technical assistance to State agencies and other public and nonprofit agencies to assist them in planning, improving, developing, and carrying out programs and activities to combat elder abuse, neglect, and exploitation; and

(D) Conduct research and demonstration projects regarding elder abuse, neglect, and exploitation, with an emphasis on causes, prevention, identification, and treatment.

The Center is expected to address a full range of subjects related to the operation of State and local elder abuse prevention and intervention services. Such subjects may include, but are not limited to:

- Increased public awareness of elder abuse and increased willingness of those affected to seek help and outside intervention;
- Education of key professionals outside the aging and adult protective services network, for example, physicians;
- Coordination of services provided by Area Agencies on Aging with services instituted under State and local adult protection service programs;

• State and community programs to prevent, identify, report, and resolve elder abuse cases through coordinated protective, aging, social, health, medicaid fraud control, consumer protection, victim assistance, legal, and law enforcement services;

• Model approaches to improve State-wide programs and systems to prevent elder abuse, neglect, and exploitation;

• Improvement of State elder abuse information systems;

• Ethical issues related to provision of elder abuse prevention and intervention services;

• Collaboration with initiatives undertaken by Federal agencies participating in the Department of Health and Human Services Elder Abuse Task Force;

• Studies of the potential of various types of interventions for reducing the risk of elder abuse, neglect, and exploitation;

• Studies of the characteristics of elder abuse victims and perpetrators according to the type of abuse and outcomes of investigations; and

• Analyses of Federal and State program policies, legislation, legislative trends, regulations, and their impacts related to State and local elder abuse programs;

Public and private nonprofit organizations, institutions and agencies are eligible to apply under this priority area. Center applicants must demonstrate a strong knowledge base related to the program issues covered by the Amendments to the Older Americans Act of 1992, Title VII, that impact on elder abuse prevention and intervention programs. Applicants should also demonstrate nationwide experience and capacity for enhancing the coordination of State and local aging and adult protective services and in working with other national, State, and local organizations active in elder abuse prevention and intervention efforts. The Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position.

Organizations and institutions which now receive funding from AoA under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant are eligible to apply. However, AoA will not provide funding to the same organization or institution for similar efforts. Therefore, should they be successful in this National Center on Elder Abuse competition, that grant award will replace any further funding support for that organization/institution under the National Eldercare Institute on Elder Abuse and State Long Term Care Ombudsman Services grant.

AoA intends to fund the National Center on Elder Abuse through a Cooperative Agreement award for an estimated project period of four (4) years. The Federal share of the Center project costs is expected to range from $300,000 to $350,000 per year depending upon the scale of the effort proposed by the applicant and approved by AoA.

Applications for continuation funding of the Center beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government. Applicants must indicate their understanding of the financial limits of support as well as how they will seek alternative sources of support during and beyond the four year project period.

2.2 National Resource Centers for Older Indians, Alaskan Natives, and Native Hawaiians

Today, longevity is becoming more prevalent in Indian, Alaskan Native and Native Hawaiian communities. This welcome trend has placed greater demands on a service delivery system which is even more complex and fragmented than systems in non-Indian communities. In recognition of this, under the Older Americans Act Amendments of 1992, Congress has mandated the support of at least two (2) Resource Centers that will focus on issues and concerns affecting older Indians, Alaskan Natives and Native Hawaiians.

Applicants must specify at least two areas of primary concern on which the Center will focus. These areas shall be: health problems; long term care, including in-home care; access to services/transportation; elder abuse; community resources; and cultural promotion. Each Center is expected to develop a number of special activities within its areas of primary concern which will address the special needs of different Indian communities, namely, those of Federally recognized tribes, of State recognized tribes, Alaskan Natives, Native Hawaiians and of Indian Urban Organizations.

Applicants *must* include all of the following activities for each primary area included in their scope of work:

(1) *The development and provision of training and technical assistance;*

(2) *Short term applied research;*

(3) *Education of professionals and paraprofessionals;* and

(4) *Effective dissemination of reports and materials developed or obtained by the Center.*

1. *Training and technical assistance (T&TA)*: The primary focus of T&TA by the Resource center is to increase the capabilities and performance of practitioners, planners and policy makers in order to expand services for older Native Americans and their families. Efforts in support of T&TA would include, but not be limited to seminars, workshops, conferences, printed materials, videos, on-site consultation, public presentations and forums. T&TA is for Title VI grantees, Tribal Organizations recognized by the State, urban Indian Organizations, practitioners, planners and policy makers. Where applicable, selected small projects can be designed for Federal, State or local agencies with the goal to enhance planning, implementation and delivery of services to older Native Americans.

2. *Applied Research:* Research is to be limited to short term studies with practical, useful products that develop, enhance or promote knowledge of and solutions to issues that impact on older Native Americans, including access, delivery, utilization, and consequences of existing health and supportive services programs.

3. *Education:* The educational focus of the Resource Center will be to initiate, expand or support educational programs for professionals and paraprofessionals in the health and social service fields, as well as other disciplines related to the development and/or provision of services for older Native Americans.

4. *Dissemination:* Each Resource Center must undertake specific initiatives that will result in effectively sharing knowledge, concepts and methodologies with professionals engaged in delivering services to older Native Americans, as well as with educators, public agencies such as Tribal organizations, State and Area Agencies on Aging, researchers and the public at large.

Substantial organizational commitment, made by the highest levels of the organization, must be clearly evident in the application. Each Center must have its own organizational identity within the awardee organization. Evidence must be provided that the Center will have the ability to function in an independent manner within the institution. Each Center shall have a Director with an appropriate background, professional training, and expertise who shall devote a minimum of 50% of her/his time to this position. Individuals qualified by

education, training and experience to accomplish the Center's activities shall be appointed to the faculty of each Center.

AoA and the Centers will work cooperatively in the development of Center agendas and awarding of subcontracts. AoA will work with the Centers to develop a system to set priorities for research; for training and technical assistance (and to assure that requests for assistance for a specific tribe are channeled through the appropriate Tribal organization); for education; and for dissemination. Whenever possible, AoA will share with the Centers information about other Federally supported projects and Federal activities relevant to its areas of primary concern.

Eligible applicants for Resource Center awards are institutions of higher education with experience in conducting research and assessment on the needs of older individuals. The Assistant Secretary for Aging will give preference to those institutions of higher education that provide evidence of relevant expertise and experience in conducting research on, and assessment of, the characteristics and needs of individuals who are older Native Americans.

It is expected that two (2) to four (4) Resource Centers projects will be funded by AoA under Cooperative Agreement awards for project periods of up to four (4) years. The Federal share of each Resource Center's project costs for the first year will be approximately $250,000; thereafter, funding for the subsequent budget periods will be approximately $300,000, $350,000 and $300,000, respectively, provided funds are available.

Applications for continuation grants of these Centers beyond the initial budget period will be reviewed on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government. Applicants must indicate their understanding of the financial limits of support as well as how they will seek alternative sources of support during and beyond the four year project period.

2.3 Training and Technical Assistance for Title VI Grantees

AoA is interested in applications for a training and technical assistance project that, consistent with Section 411(a)(4) of the Older Americans Act, will further develop and strengthen the capacity of Title VI program directors and staff to provide comprehensive and coordinated systems of nutritional and supportive services for individuals who are older American Indians, Alaskan Natives and Native Hawaiians. Of particular interest are coordination of resources under Title VI and Title III of the Older Americans Act and strengthening Title VI program accountability.

Applications are solicited from public, voluntary or nonprofit organizations that are familiar with Older Americans Act programs and are knowledgeable about Title VI programs. The applicant selected to receive an award must be qualified to provide high quality training and technical assistance specifically adapted to the needs of the diversity of Title VI programs throughout the country.

The application should include:

(a) A plan for assessing training and technical assistance needs;

(b) A plan for both individual and group training and technical assistance;

(c) A plan for a national meeting, annually, to train directors of programs under Title VI;

(d) A discussion of how training and technical assistance will be coordinated with the AoA Regional Offices to assure training needs identified by Regional staff through their grants monitoring activities are addressed; and

(e) An evaluation plan to measure the results of the training and technical assistance provided, including process, outcome and impact measurements.

The training and technical assistance to be conducted under this project will include, but not be limited to the following areas:

- Effective provision of nutritional and supportive services;
- Data gathering, maintenance of records and report preparation;
- Effective use and coordination of resources under Title VI and Title III, including case management for targeting persons most in need;
- Effective integration of training with the AoA National Eldercare Institutes especially in the areas of nutrition, health promotion, health care and long term care; and
- Provision of training to new Title VI program directors.

The project shall have a Project Director with an appropriate background who shall devote at least 50% of her/his time to this effort. Appropriately qualified individuals shall be appointed to the project staff for purposes of providing the training and technical assistance effort described above.

Under the cooperative agreement award mechanism, AoA and the successful applicant will share the responsibility for managing the training and technical assistance program. The successful applicant will have the primary responsibility for developing and implementing the training and technical assistance activities. AoA will jointly participate with the successful applicant in such activities as clarifying issues for the national training meeting agenda, establishing priorities for training and technical assistance, coordinating with the AoA Regional Offices, and developing appropriate evaluation measures. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

AoA expects to fund one project under this priority area, with a Federal share of approximately $400,000 per year, and a project duration of approximately three (3) years.

2.4 National Leadership Institute on Aging

Since passage of the Older Americans Act in 1965, the aging network of State and Area Agencies on Aging, Tribal Organizations, and Older Americans Act Program Service Providers has matured and become an indispensable resource for older Americans in communities across this country. Until recent years, efforts have focused on building the aging network, resolving service delivery and development issues, and expanding the management capabilities of aging network executives.

By the mid 1980s, it became apparent that this nation was facing an era of fiscal conservatism at a time when both the population of older Americans and the intricacy of their needs were increasing. The impact of rapid and complex technological, social, economic and demographic changes and their implications for the future became very clear. The challenges demanded that executives and others in the field of aging adjust their vision of the issues and expand their role as innovators in behalf of older persons, their caregivers and families. In 1988, under the authority of Section 411(a) and Section 411(b)(2) of the Older Americans Act, the Administration on Aging (AoA) established the National Leadership Institute on Aging (NLIA) to provide a forum in which aging network executives could rethink issues and enhance their role as leaders in this era of change.

The NLIA, now in its fifth and final year of funding by AoA, has provided a highly successful residential leadership development program to aging network executives in the public, private and non-profit communities. The program

creates an environment where participants are encouraged to think innovatively about the challenges of an aging America, to engage in strategic planning focused at the community level, and to act collaboratively with other public and private institutions to meet the needs of older persons. To date, the National Leadership Institute on Aging has trained several hundred aging network executives through more than a dozen residential programs. The NLIA also offers extensive consultation and technical assistance to agencies and communities. Surveys indicate that the program has been well received by participants and their organizations.

There continues to be a need to stimulate the thinking and creativity of leaders on such issues as public-private partnerships; coalition building; community based long term care; managed care; urban, suburban and rural concerns; health care and many others. AoA intends to continue support, through a new cooperative agreement award, for a National Leadership Institute on Aging and is soliciting applications from organizations that have demonstrated the professional and administrative capacity to conduct such a program. AoA's goal is to assure availability of a program that is current with new trends and techniques in leadership development, strategic planning, community action and administration.

The proposed NLIA curriculum shall concentrate on leadership development concepts and skills in the context of aging issues. The program should not duplicate skills training such as fiscal management and supervision, topical reviews on subjects such as nutrition or day care, and other training which is the normal responsibility of State, Tribal, or local organizations. Applicants should identify and describe the course curriculum and show how the courses will meet the needs of participants. The curriculum should take into account such items as emerging trends for higher productivity, greater responsiveness to the customer, quality services and decentralized decision making.

The applicant should adapt the current state of knowledge regarding the effective organization and best practices of all relevant residential programs to the particular background experience, capabilities, and interests of the executives from a select group of organizations and agencies (as outlined below) who will be participating in the NLIA residential program. Possible sites for the residential program should be discussed and the environment selected should be conducive to workshops, independent study and informal sessions (beyond the classroom and conference area) in the evenings and over a weekend period. While the residential training represents the core of the program, applicants may wish to propose additional training formats to reach audiences that may not have the opportunity to attend a residential program.

In the past, participation in the training program has focused primarily on executives, top managers, and key mid-level staff of State and Area Agencies on Aging and Tribal Organizations. Limited numbers of participants came from other organizations such as universities, foundations, non-profit entities and others. Although members of the aging network should continue to be the primary audience for the program, *special efforts should be made to publicize the program and recruit top level or key representatives from those organizations outside the traditional aging network which have given aging issues a prominent place in their planning and action agenda.* Such organizations include, but are not limited to, business, church organizations, professional and trade associations, labor unions, national non-profit organizations and their affiliates, foundations and civic groups. All participants must be nominated by the organizations with which they are affiliated.

The National Leadership Institute on Aging must have its own strong organizational identity within the structure of the host organization. Evidence must be provided that the Institute will have the ability to function in a reasonably independent manner. An Advisory Committee shall be established to insure that the Institute is responsive to the needs of the program participants and is technically sound. It must be comprised of representatives of the aging network, other leaders and experts in the field of aging, and experts in field of leadership development.

The Institute shall have a Director with an appropriate background and experience who shall devote at least 50% of her/his time to this effort. Faculty will include resident core staff with expertise in one or several of the curriculum topics. The core faculty may be supplemented by visiting faculty who are expert in pertinent topical areas.

AoA intends to fund the National Leadership Institute on Aging through a Cooperative Agreement award for an estimated project period of five (5) years. The Federal share of the Center project costs is expected to approximate $400,000 in the first year and $500,000 in subsequent years. Each participant (or their employer) will be expected to contribute a minimum of $400 toward the cost of training. Provision will be made for scholarships to support participation by organizations that demonstrate an inability to pay the minimum cost. The applicant shall set forth a plan for garnering other sources of financial support such as partnership arrangements, foundation or endowment support or other appropriate assistance.

2.5 Senior Transportation Demonstration Program Grants

The Amendments to the Older Americans Act of 1992 include several provisions which recognize the transportation and access barriers faced by older persons, especially those elderly whose lack of transportation services place them at serious risk of losing their independence, including rural, low income, and minority older persons. In particular, the Amendments direct the Administration on Aging to carry out a Senior Transportation Demonstration Program. After a background discussion of the issues affecting transportation services for older persons, the specifics of the demonstration projects mandated by the 1992 Amendments are outlined by this priority area.

Transportation is often the key factor to determining whether an older person can live independently. It is vital that there be an effective and affordable system of transportation services available to the at-risk elderly population if they are to avail themselves of community-based services. The National Research Council's Transportation Research Board in a recent report summed up the matter by simply stating "mobility is essential to the quality of life for older people." Yet, we have not fully grasped the fact that the control of one's life, the maintenance of adequate housing and living arrangements, the use of financial, medical and social services, these purposes can not be realized by older persons, especially those at risk, if they do not have ready access to transportation services.

The automobile remains the principal mode of transportation for the Nation's citizens, including its senior citizens. More than 80 percent of trips made by persons over the age of 65 are made in automobiles, either as drivers or passengers, and that percentage is increasing. In 1965, only 40 percent of those age 65 or older had drivers licenses, as compared to 65 percent in 1985. More than 90 percent of those who will be age 65 in the year 2020

have a driver's license today. Thus, the planning and consideration of senior transportation programs must take into account that the great majority of older persons have and will continue to meet their transportation needs through the use of private automobiles, if not their own cars, then those of a relative, a friend, or a neighbor.

The needs of older drivers are of serious concern to all of us. As they age, older drivers gradually experience the loss of physical or financial ability to drive and to maintain an automobile. Neither vehicles nor roads were designed for those over age 65. Roadway design and sign standards need to be changed to respond to visual and other limitations often experienced by older drivers. When older persons—and the non-drivers who depend upon them—lose the ability to drive, they not only suffer drastic decreases in mobility, often, they lose the capacity to maintain the independent life styles made possible by the flexibility and convenience of an automobile.

Several studies list the lack of transportation as the primary barrier to older people obtaining services. Use of an automobile may be neither possible nor practical for large numbers of rural, suburban, and urban elderly. In rural and suburban areas, public transit systems are often unavailable; and the cost of private taxi service is prohibitive. In urban areas, impediments—crime, schedules, safety or the physical design of vehicles—often inhibit accessibility to public transportation for the elderly.

Legislation administered by the U.S. Department of Transportation (DOT) that impacts older persons includes The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Public Law 102–240, and the Federal Transit Act (FTA), as amended, 49 U.S.C. app. Section 1601 *et seq.* (This Act was originally known as the Urban Mass Transportation Act of 1964). ISTEA sets out policy for a National Intermodal Transportation System that will move people and goods and allow the United States to compete in the global economy in an economic, environmentally and energy efficient manner. Administered by the Federal Transit Administration, formerly the Urban Mass Transportation Administration, ISTEA has its focus on a future in which all transportation is viewed as a system. This view supports mandates in the Federal Transit Act that direct the Federal Transit Administration to address many of the issues faced by older persons as they seek access to needed transportation.

The Federal Transit Act puts the needs of the "transportation disadvantaged" on the nation's transit agenda by setting goals that include improving the mobility of older persons, persons with disabilities, and low income persons. The Act requires that highways and transit be planned together and that local communities assure maximum feasible coordination with other Federally funded transportation programs. Several provisions of the Act, in particular Sections 3, 9, 16, and 18, are focused on the improvement of transportation services for older persons. (These sections can be found at 49 U.S.C. app. Sections 1602(a)(1)(E), 1607a(e)(3)(D), 1612(a) and 1614.)

The Administration on Aging, through the implementation of OAA Title III at the area agency level, is among the primary providers of transportation services for older persons. Thus, AoA has been aware of the impact of transportation, or the lack of transportation, on the quality of life for senior citizens. Over the past several years, AoA has developed a collaborative relationship with the DOT, in particular with FTA, to improve transportation services to the elderly. One of the goals of this collaborative effort has been the coordination of transportation services at the local level. The Amendments to the Older American Act of 1992 and provisions of ISTEA have positioned local communities to strengthen existing local collaborative efforts and to initiate new efforts where none have existed.

More specifically, the Amendments of 1992 add Section 429D to the Older Americans Act which directs the Administration on Aging to carry out a Senior Transportation Demonstration Program. This priority area is intended to implement the purposes of this new program, namely to:

- Demonstrate innovative approaches for improving older persons access to health care, nutrition and other supportive services;
- Develop comprehensive, integrated senior transportation services; and
- Leverage resources for senior transportation services through the coordination of (a) various transportation services and (b) various funding sources including, but not limited to, Sections 9, 16(b)(2) and 18 of the Urban Mass Transportation Act of 1964; and Titles XIX and XX of the Social Security Act.

AoA will make awards for projects that will best carry out the following objectives:

A. Demonstrate precedent-setting strategies for enhancing senior transportation services and developing resources for those services within the geographic area served by the applicant;

B. Establish plans that ensure the coordination of senior transportation services with public (mass) transportation services as well as specialized transportation services provided within the geographic area served by the applicant;

C. Demonstrate the capacity to employ the broadest range of transportation and community resources available to the community for the provision of senior transportation services;

D. Demonstrate the capacity to cooperate and coordinate with providers of services under OAA Title III, Titles XIX and XX of the Social Security Act, health care, and providers of mass and other public and specialized transportation services for the provision of senior transportation services; and

E. Establish plans for senior transportation demonstration programs that target frail, at risk, disadvantaged and low-income elders, with special emphasis on those residing in rural areas by developing specific strategies to meet their needs.

Applicants for awards under this priority area must provide information that:

(1) Describes senior transportation services for which they are seeking assistance;

(2) Presents a comprehensive strategy for developing a coordinated transportation system or for leveraging the resources to provide the services of such a system;

(3) Describes the scope of the coordinated system with details of the responsibilities of all participants, including providers of OAA Title III, Titles XIX and XX of the Social Security Act, health care, and other social and supportive services as well as providers of mass and other public and specialized transportation services;

(4) Indicates the applicant's understanding of the state of knowledge regarding elderly transportation issues, its awareness of the work being carried out to address those issues (including the effort of the National Eldercare Institute on Transportation), and its capability for assessing the policy implications of the Senior Transportation Demonstration Program;

(5) Provides a plan for evaluating the effectiveness of the proposed senior transportation demonstration program and submits a report, suitable for submission to the Congress, documenting the project results.

Eligible applicants include State and Area Agencies on Aging, State Departments of Transportation, and

other public agencies and non-profit organizations. At least 50% of the awards will be made to entities located in, or primarily serving, rural areas. AoA expects to fund approximately five (5) projects under this priority area with a Federal share approximating $100,000 per year and an estimated project period of two (2) years.

2.6 Demonstration Programs for Older Individuals With Developmental Disabilities

The total number of elderly persons in the United States who are developmentally disabled is estimated to be as high as one-half million persons. These older persons are in double jeopardy. Their problems are complicated by longstanding physical or mental impairments and frequently they need individualized housing, day care, and other supportive services. Assistance, through the provision of appropriate services, to this priority older population can be made available and accessible within the community through a comprehensive, coordinated, community-based service system. This system of services should be designed to enable older persons with developmental disabilities to attain and maintain emotional well-being and independent living.

The Older Americans Act now contains several provisions which give priority attention to the need for services to elderly disabled people and cooperation with agencies and organizations regarding the developmentally disabled. For example, the Act requires the State Agency on Aging to establish and operate an Office of the State Long-Term Care Ombudsman. This Office is required to coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986.

With respect to the needs of elderly persons with severe disabilities, the Older Americans Act requires State plan assurances that the State Agency on Aging will coordinate planning, identification, assessment of needs, and the provision of services for older individuals with disabilities with State agencies primarily responsible for disabled, including severely disabled, persons. The State plan must also contain an assurance that the State will work with these agencies to develop collaborative programs to meet the needs of older individuals with disabilities.

Through Section 415 of the Amendments to the Older Americans Act of 1992, the Congress has recently given added emphasis to the issues of providing services to older individuals with developmental disabilities as well as to older individuals with caretaker responsibilities for developmentally disabled family members, both children and adults. State and local planning linkages are needed in order to facilitate the effective coordination and delivery of services to these individuals. Administrators and managers of programs that serve older and developmentally disabled persons need to increase their understanding about the interrelationships of the Older Americans Act and the Developmental Disabilities Assistance and Bill of Rights Act—their budgets, policies, organizational structures, functions, priorities, mandates, and target populations.

The purpose of this priority area, consistent with Section 415 of the 1992 Amendments, is to support the efforts of agencies that serve older and developmentally disabled persons to collaborate on State and local planning, coordination, and programs that will improve services to older persons with developmental disabilities and to older persons who care for younger family members with developmental disabilities. Such services include:

(1) Child care and youth day care programs;

(2) Programs to integrate the individuals into existing programs for older individuals;

(3) Respite care;

(4) Transportation to multipurpose senior centers and other facilities and services;

(5) Supervision;

(6) Renovation of multipurpose senior centers;

(7) Provision of materials to facilitate activities for older individuals with developmental disabilities, and for older individuals with caretaker responsibilities for developmentally disabled children;

(8) Training of State Agency, Area Agency on Aging, volunteer, and multipurpose senior center staff, and other service providers, who work with such individuals; and

(9) In-home services.

Applications are solicited from State Agencies on Aging, or Developmental Disabilities State Planning Councils, for projects to develop collaborative models which demonstrate and document successful strategies for coordinating programs and services for older persons with developmental disabilities and older individuals with caretaker responsibilities for younger developmentally disabled family members. These models should be described by the applicant in terms of the (1) Efforts of the AoA Network to develop State and local planning linkages; (2) barriers to collaboration and coordination and methods used to overcome barriers; (3) linkages with relevant agencies who share concerns in the area of aging and developmental disabilities; and (4) examples of successful integration of older persons with developmental disabilities into Older Americans Act Programs.

Applications must:

- Provide a description of the key tasks to be undertaken to implement the project as well as how the State Agency on Aging, the Area Agency on Aging and the Developmental Disabilities State Planning Council will collaborate on the project;
- Provide a description of the instructional materials to be developed under the project and discuss how these materials are designed to assist in planning, coordinating, and improving service delivery to older persons with developmental disabilities and to older individuals with caretaker responsibilities for their developmentally disabled children;
- Include a plan for dissemination of project findings along with statements from all agencies involved in the project, which clearly state their commitment to the proposed collaborative efforts aimed at serving the elderly and the developmental disabled;
- Provide evidence that the model(s) produced under the project will be ongoing once the grant terminates and describe how the effectiveness of the project will be assessed; and
- Assure that, if funded, the project's final report will include sufficient documentation and information on the implementation of the models, including the resolution of problems, to maximize the report's usefulness to other States desiring to replicate the model.

Only State Agencies on Aging or Developmental Disabilities State Planning Councils are eligible to apply under this priority area. In every case, the State Agency on Aging and the Developmental Disabilities State Planning Council must be partners in the project. State Agencies on Aging must involve the Area Agencies on Aging in developing planning linkages at the local level. The Administration on Aging plans to fund approximately five (5) projects under this priority area with a Federal share of approximately

$100,000 per year for an estimated project duration of two (2) years.

2.7 Demonstration Projects for Intergenerational and Multigenerational Activities

Applications are solicited to develop and implement intergenerational and multigenerational programs designed to assist families at-risk. Over the past several decades, traditional bonds within families and communities have been greatly compromised. Historically, families have taken responsibility for supporting their members. However, increased stress on families has made this more difficult. There is a growing segregation occurring between aging parents and their children and grandchildren. A growing number of older persons are now living alone and isolated. At the same time, at-risk youth face problems of poverty, drug abuse, violence, and teen-age pregnancy.

We are also seeing a growing phenomenon of grandparents assuming the role of caregiver because parents are not able to care for their own children. Programs and policies involving issues facing at-risk American families have often failed to consider the vital roles and contributions made by older family members. Policies often are created and implemented without considering the importance and relevance of the extended family network. Older persons are integral players in the family, neighborhood and community.

Intergenerational and multigenerational programming has surfaced as one vehicle for addressing some of the issues currently affecting the family and society as a whole. Intergenerational programming, planned ongoing activities between youth and older people that foster mutual growth and address community needs, has emerged as a cost-effective way of mobilizing human resources and fostering understanding. These programs have proven particularly effective because they meet numerous needs of young and old, families and communities. Programs which involve young people as resources to older persons provide an innovative way of meeting needs of the elderly and enhancing services within the community. Seniors can be an excellent resource to assist at-risk youth and their families. There is also a growing movement of the elderly and youth working together to assist with problems facing communities across this country.

Across the country, there are many programs which have been tested and are currently underway in the area of intergenerational and multigenerational programming. Many of these programs have emerged as the result of collaboration between, and joint support from, the Administration on Aging and the Administration for Children and Families. This priority area is intended to build upon the shared experience and results of these AoA-ACF collaborative efforts and to point toward future areas of interagency program cooperation designed to strengthen the bonds among generations of Americans.

Examples of intergenerational/multigenerational programs currently underway include:

- Family support programs—for example, volunteer senior aides ("family friends") providing in-home support to chronically ill and disabled children and their families;
- Intergenerational child care programs: older workers in child care centers, or child care centers operating within long-term care facilities.
- Mentoring programs—older persons provide guidance and friendship to at-risk youth;
- School tutoring programs—older persons provide assistance and tutoring to school children during and after school;
- School-based congregate meals programs for the elderly—intergenerational exchanges of services between the elderly and students at elementary, middle, and high schools;
- Literacy programs for older adults utilizing college students as tutors;
- Chore services—young persons perform a basic chore for vulnerable older persons;
- Friendly visiting—young persons visit older persons in their homes or in long-term care facilities;

The benefits of intergenerational programs to all generations and the family are numerous. Young people receive extra love and attention as well as guidance and support from a contributing and caring adult. Seniors receive needed services from the youth to help them maintain their independence. Although demonstration programs exist throughout the country, the establishment of intergenerational programs solidly within existing systems has not taken place in most communities. Rarely are intergenerational programs seen as long-term initiatives that can be integrated into the programs of national, State, and local organizations and associations.

This priority area responds to the priorities set forth in Sections 406 and 409 of the Amendments to the Older Americans Act of 1992. Its purpose is to increase and expand the commitment of organizations and associations to incorporate intergenerational and/or multigenerational programs into their agendas on a priority basis, with a focus on the role of older family members in the development of solutions to the problems that impact on American families.

Eligible applicants are organizations that employ, or provide opportunities for, older individuals to engage in multigenerational activities. In awarding grants, the Assistant Secretary for Aging will give preference to (1) Organizations with a demonstrated record of carrying out multigenerational activities and (2) organizations proposing projects that will serve older individuals with greatest economic need (with particular attention to low-income minority individuals).

The Administration on Aging (AoA) intends to make two types of awards under this priority area: 2.7.1 Demonstration Projects and 2.7.2 Technical Assistance Project.

2.7.1 Demonstration Projects

AoA plans to fund approximately five (5) demonstration projects at a Federal share of approximately $100,000 per project for a period of approximately 17 months. Such projects should be designed as models for testing the effectiveness of innovative approaches to multigenerational/intergenerational programming in fostering and expanding the bonds among and between generations. Projects funded under this priority area will receive technical assistance and guidance in the development and implementation of their projects. Assistance will be provided via telephone, mail and on-site visits. Plans call for project directors to attend at least one cluster meeting in Washington, D.C. during the project period.

2.7.2 Technical Assistance Project

AoA plans to award one project grant under sub-priority area *2.7.2* to provide technical assistance and training to the new demonstration projects. In that capacity, the project grantee will serve as an information base and program resource in promoting the effective transfer, dissemination, and utilization of relevant intergenerational and multigenerational program products and best practices. The project grantee is also expected to develop and implement a public awareness campaign aimed at promoting intergenerational and multigenerational programs to relevant audiences of organizations and associations, the aging network, and media sources.

Applicants for this grant must demonstrate a strong knowledge base and extensive experience in providing technical assistance and training in the

area of intergenerational programming. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to analyze the policy implications of this intergenerational/multigenerational demonstration program and to offer recommendations for future program initiatives.

The application must include a detailed plan for assisting approximately five (5) demonstration projects. Plans should include at least one site visit to each project and a "cluster" meeting for the new model projects funded under section (1) above. The successful applicant under this section is responsible for assisting the five (5) funded projects with the following:

(1) Providing timely and relevant background information regarding effective intergenerational programming;

(2) Training and technical assistance in program development, linkages with aging/youth networks;

(3) Assisting in strategic planning; and

(4) Increasing public awareness and commitment (including media strategies) to innovative intergenerational and multigenerational efforts.

It is anticipated that the funding support for this technical assistance and training project will be approximately $200,000 for a project period of approximately seventeen (17) months.

2.8 Rural Mental Health Care Training for Service Providers

The Administration on Aging (AoA) is soliciting applications to develop and conduct training programs for rural family and individual service care providers in mental health care. These awards are intended to meet the serious needs of older persons at risk of mental health impairment in areas that are underserved by mental health professionals. By training family care providers, including clergy, primary health care professionals, social workers, home care aides, and community volunteers, to detect risk factors and behavior characteristics of depression and other disorders among frail elderly and communicate this information to mental health care professionals, it is hoped that supportive care and assistance can be given to prevent further impairment and reduce the risk of major physical and mental disorder.

According to the recently released report, *Aging America: Trends and Projections* (1991), studies over the last several decades have documented that between 15 percent and 25 percent of older people have serious symptoms of mental disorder. While older persons are at the same risk of psychiatric disorder as the general population, they represent a greater proportion of persons with cognitive impairment due to organic mental disorders and a greater proportion of individuals with secondary symptoms of depression related to poor physical health, misuse of alcohol, and inappropriate use of prescriptive and non-prescriptive medications. The suicide rate is higher among the elderly than among any other age group.

The incidence of mental health disorders is highest among elderly living in institutional settings, and is a major reason for their placement or admission. With few exceptions, however, persons with diagnosed health disorders live in community settings, most in their own homes, either alone or with family members, a small proportion in small group homes. In many cases, the caregivers of older persons with mental health disorders, and often those who care for older persons with chronic physical impairments as well, have, or run a serious risk of developing, mental health problems created by heavy caregiving burdens.

The National Resource Center for Rural Elderly at the University of Missouri-Kansas City, with AoA support, recently published a resource book, *Mental Health Services for Elders in Rural America* (1991), in which the level and characteristics of mental dysfunction of the rural aged are described in detail. While it indicates there is little difference in life satisfaction between the aged in rural and urban areas, there are social, environmental, and income differences which exacerbate the vulnerability of older persons living in rural areas to problems of mental illness. Most prominent of the barriers are lack of resources, difficulty in gaining access to existing resources, and often an enduring reluctance to seek assistance, especially in situations where stigmas still persist. In 1989, fewer than 5% of patients at community mental health centers and less than two percent of patients of private psychiatrists were older adults living in non-metropolitan areas.

None of the three primary delivery systems—primary mental health (e.g. Community Mental Health Centers), the Aging Network (e.g. nutrition sites), and primary health (e.g. satellite medical clinics) are adequate to address these needs or overcome these barriers. Nevertheless, the existence of these systems for delivery of mental health, health and aging services are a potential asset if access barriers are overcome. AoA has demonstrated in previous grants that exemplary models for outreach, such as those cited by the Center for Rural Elderly, which involve training volunteers, non-traditional service providers, and non-mental health aging service providers as general purpose outreach workers for the aging, can increase the access of the more isolated elderly in rural areas to mental health services.

AoA intends to support two State-wide training grants which will demonstrate the feasibility and effectiveness of training non-mental health professionals to provide early detection and assistance to isolated frail elderly in rural settings. Applicants must be responsive to the standards specified for these rural mental health care training projects by Section 411(e) of the 1992 Older Americans Act, as amended, including involvement of qualified mental health professionals in the preparation and use of training materials, the use of community hospitals as locations for training workshops, and participation of faculty and students in non-medical departments of academic institutions with a history of interest and experience in mental health education. Each project will be expected to develop, test and revise after trial, training materials suitable for non-health professionals which increase understanding of the fundamental concepts of normal aging, increase recognition of common mental health disorders in older persons, and increase the ability to refer risks and symptoms of disorders to providers of mental health services. Applicants must include evidence of commitment and support to the objectives of their proposed project from organizations and institutions in the mental health and aging service delivery systems.

The approximate Federal share of funding for each award is $200,000 per year for a project period of up to two (2) years. The eight (8) percent indirect cost limitation for training grants will be applied for training activities involving academic institutions. Differences between the 8% rate and the institution's approved indirect cost rate may be applied to the 25% cost sharing requirement. Applicants should indicate a commitment to sustaining the project's accomplishments after Federal grant support is ended.

2.9 Pension Information and Counseling Demonstration Program

Retirement means many things to different people. For most people, it means an end to the regular workaday world of full time employment and a switch to part time work or leisure time and volunteer activities. For most people, retirement also means a change in the amount and the source of their income.

Depending on a person's age at the time of retirement, he or she will be eligible for social security. But social security does not and was not intended to provide all the income that a person needs in retirement. Most government employees and many people in private industry are covered by some sort of pension plan to assist them in retirement. Employee pensions account for almost 20% of the income of older persons. Overall, two out of every five older household units receive income from public and/or private pension benefits other than Social Security.

Nevertheless, the adequacy, availability, coverage, and reliability of pensions remain as issues. In particular, problems arise when people move from company to company during their careers, when companies go out of business, or when companies are bought out by other companies and pension plans take on a different form. Compounding this problem are the myriad of entitlements and restrictions that are built into different pension plans, occasionally rendering them almost unintelligible to anyone but highly trained legal experts.

Recognizing the large unmet need to provide older Americans with information and counseling in the area of pension benefits, Congress provided in Section 419 of the Amendments to the Older Americans Act of 1992 for the funding of Pension Information and Counseling Demonstration Projects. In response to that mandate, under this priority area the Administration on Aging (AoA) will fund a number of demonstration projects as well as a training and technical assistance project to provide support to the pension information and counseling effort. Both types of projects should address not just how to obtain pension benefits, but also how to live on and wisely invest the benefits which the retiree receives.

Under priority area 2.9.1, AoA intends to fund approximately six (6) demonstration projects at the State or local level that seek to provide outreach, information, counseling, referral and assistance in the area of pension benefits. These projects shall:

- Provide counseling and assistance to individuals needing information that may assist them in establishing rights to, obtaining, and filing claims or complaints relative to pension and other retirement benefits;
- Provide information on sources of pension and other retirement benefits;
- Make referrals to legal and other advocacy programs;
- Establish a system of referrals to Federal, State, and local Departments or agencies relative to pensions and other retirement benefits;
- Establish outreach programs to provide information, counseling, assistance and referral regarding pension and other retirement benefits with particular emphasis on outreach to women, minorities and low income retirees; and
- Provide basic information to people about what options are available to them for their retirement annuities.

Projects should consider the possibility of locating at senior centers or other places where seniors tend to congregate. They should also consider the possibility of training volunteers to work with claimants on many of the details that do not require legal interventions.

Applicant eligibility for pension information and counseling demonstration project awards is limited by statute (Section 419 of the 1992 Older Americans Act Amendments) to State and Area Agencies on Aging and nonprofit organizations with proven experience in the counseling of older persons regarding retirement benefits and pension rights. AoA intends to support each of the projects at a Federal share of approximately $75,000 for a project period of approximately seventeen (17) months.

Under priority area 2.9.2, AoA intends to fund one technical assistance project that will strengthen the role of the demonstration projects, State and Area Agencies on Aging and legal services providers, both public and private, in providing pension assistance and encouraging coordination among these groups. This project will provide technical assistance to the demonstration projects and to legal services projects that seek to develop programs on pension benefits counseling. The project will (1) develop a cadre of trained legal experts who are willing to work with local personnel and claimants who need to access the private pension sector and (2) provide training for professional and volunteer personnel who will work with older Americans at the State and local level to assist them in understanding and gaining better access to their pension rights and options.

Applicants for this grant must demonstrate a strong knowledge base and an extensive experience of providing national information, counseling, and advocacy in matters related to pension and other retirement benefits. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to analyze the implications of the demonstration projects in the broader context of tax policy, pension reform, and retirement planning, and to offer recommendations for future program initiatives related to pensions and income security for older Americans.

AoA intends to support this project at a Federal share of $200,000 for a project period of approximately seventeen (17) months.

2.10 Music Therapy, Art Therapy, and Dance-Movement Therapy Projects

Growing old may present a number of challenges and crises, both physical and psychological. Music, art, and dance-movement therapies can offer a psychotherapeutic approach to ameliorating or staving off problems related to aging. These therapies are designed to restore or improve physiological and/or psychological functioning. These therapies have been used with the elderly in institutions, convalescent homes, respite care and day care centers. While some research has been conducted, much remains to be done to demonstrate their effectiveness and to adapt them to the special needs of institutionalized elderly or elderly at risk of losing their independence.

In response to a priority established by Congress through Section 406 of the Amendments of the Older Americans Act of 1992, the Administration on Aging (AoA) is inviting applications to advance our understanding of the efficacy and benefits of providing music therapy, art therapy, or dance-movement therapy to older individuals. Section 406 authorizes both (1) research and demonstration projects and (2) education, training, and information dissemination projects as outlined in the following two sub-priority areas. Projects funded under these two sub-priority areas will be resonsible for submitting to AoA a report that (1) documents the results and findings of their projects and (2) presents recommendations on means for providing art, music, or dance therapy to older persons more effectively and efficiently.

2.10.1 Music/Art/Dance-Movement/ Therapy Research and Demonstration Projects

AoA is interested in funding projects which will study, demonstrate, and evaluate the provision of music therapy, art therapy, or dance-movement therapy to older individuals who are institutionalized or at risk of being institutionalized. Project topics should include, but are not limited to:

- The effect of these therapies on neurological functioning, communication skills, and physical rehabilitation in older adults;
- Their efficacy as interventions in improving cognitive, emotional, and social functioning in persons with Alzheimer's disease and related dementias; and
- Their efficacy as interventions in the care of elderly persons at risk of being institutionalized.

Local program settings for such projects would include:

(1) Nursing homes, hospitals, rehabilitation centers, hospices, or senior centers;

(2) Disease prevention and health promotion services programs established under part F of Title III of the Older Americans Act;

(3) In-home services programs established under part D of Title III;

(4) Multigenerational activities programs described in Section 307(a)(41)(B) or subpart 3 of Part C of Title III;

(5) Supportive services programs described in Section 321(a)(21) or;

(6) Disease prevention and health promotion programs described in Section 363(5).

Applicants should discuss the following in detail: (1) How the demonstration project will further our understanding and knowledge of music/ art/dance-movement therapy provided to the elderly;

(2) How the project will collaborate with local program sites as described above and with other local organizations/specialists whose skills will be needed in the project;

(3) How project products (i.e. videos, manuals) will be broadly disseminated; and

(4) How the project goals and outcomes will be evaluated.

Eligible applicants under this sub-priority area are organizations which represent certified and registered music/ art/dance-movement therapists and other organizations which are qualified to administer these projects. AoA plans on making 4 to 6 awards under this sub-priority area with a Federal share of approximately $75,000 to $100,000 for a project duration of approximately twelve (12) months.

2.10.2 Education, Training, and Information Dissemination Projects for Music/Art/Dance-Movement Therapists and the Aging Network

Under this sub-priority area, AoA is interested in supporting:

(1) Education and training projects which will provide gerontological training to music/art/dance-movement therapists and/or education and training of individuals in the aging network regarding the efficacy and benefits of music/art/dance-movement therapy for older individuals; and

(2) Information dissemination projects to provide the aging network, and music/art/dance-movement therapists, background materials on music/art/ dance-movement therapy, best practice manuals, and other information on providing music/art/dance-movement therapy to older individuals.

Applicants should discuss in detail:

(1) How the proposed project will benefit older persons by an interchange of knowledge and a sharing of professional skills among the gerontological community, the aging network, and the practitioners of art, dance-movement, and music therapy;

(2) How education, training and information dissemination will be conducted;

(3) How project products (i.e. videos, manuals) will be broadly disseminated; and

(4) How project goals and outcomes will be evaluated.

Eligible applicants under this sub-priority area are organizations, including music/art/dance-movement therapist organizations, which are experienced and knowledgeable in providing education and training in gerontology and in disseminating information and materials on music, art, and dance-movement therapy. AoA plans on making 3 to 5 awards under this sub-priority area with a Federal share of approximately $100,000 for a project duration of approximately twelve (12) months.

2.11 AoA Dissemination Projects

Each year, AoA invests substantial Older Americans Act Title IV resources in grant and cooperative agreement projects to conduct research, demonstrations, and training to improve the quality and availability of services and programs that are vital to the well-being of at-risk older persons. Dissemination is a basic component of each of these projects. Every Title IV project is required to conduct appropriate dissemination of project results as part of its work plan. For the many projects which are essentially knowledge transfer activities (e.g., technical assistance, public/professional education), dissemination is the key component.

Enhanced dissemination is still needed, however, to maximize the utility of Title IV projects. The urgency to improve the effectiveness and availability of services is especially pronounced as both fiscal constraints and the number of older Americans increase. The ultimate goal of this priority area is to maximize the utilization of Title IV project products and results that can directly benefit older Americans in need of services.

The AoA Dissemination Projects funded under this priority area are also expected to foster greater awareness of the challenges of an aging society and of the contributions, real and potential, that aging programs make in responding to those challenges. These awareness-building efforts may take several forms, including the development and dissemination of materials keyed to decisionmaking points on a particular aging issue and the use of appropriate communication mechanisms.

Two types of project applications may be submitted for review and funding consideration under this priority area:

A. Enhanced Dissemination of Product(s) of Significant Value

A major purpose of this priority area is to support more extensive dissemination of Title IV products of significant value. In the course of performing their work, grantees sometimes develop especially valuable products which warrant dissemination beyond that originally contemplated or for which dissemination opportunities are found which were not envisioned earlier. Where the grantee is convinced that such products are both needed and of demonstrated value to the aging network and/or others involved in improving the availability, effectiveness, and quality of aging services, it may apply under this section for further funding. (This opportunity applies to both current and former grantees whose projects were completed after January 1, 1990).

Applicants may address the dissemination of either a single product or more than one product from a single project. In this context, the term "product" may include the "Final Report" as well as other project products such as manuals, handbooks, curricula, brochures, technical assistance materials, reports, audio-visual materials, etc.

B. Syntheses of "Cluster" Projects Results and Products

A second purpose of this priority area is to support the development and dissemination of syntheses of project products/results from earlier Title IV project "clusters" (e.g., projects funded under the same priority area under a previous AoA Discretionary Funds Program announcement). Projects in a cluster may vary widely in terms of approach, products, and outcomes but all deal with the same subject matter or problem area. A synthesis of needed and useful products/results of these projects may well have synergistic value, and a multiplier effect, in generating knowledge and substantiating best practices which can be applied to the benefit of older Americans.

Such a synthesis may take various forms. An applicant may synthesize exemplary products as produced—or change the form of the product to maximize utilization. Creative adaptations may be needed. A compilation of relevant demonstration or research *results* (and/or recommendations) from the cluster may be what is needed. Applicants are encouraged to be innovative in their response to this priority area. The need for additional product(s) or outcomes of the synthesis should be demonstrated. A strategy for promoting utilization must be included as part of the application.

Applications of either of the types described above should carefully specify not only what dissemination activities are to be performed but also: (1) Why the product(s) is important, (2) to whom it is important, (3) what would be the results and benefits of dissemination and utilization of the product(s), and (4) what specific actions such as training or technical assistance would the proposed project undertake to assist those who wish to adapt or adopt the products and/or the recommendations contained in the products.

In preparing applications under this priority area, applicants may find useful the publication *Dissemination by Design* which was produced as part of an AoA Title IV project. Interested applicants who do not already have a copy of this publication may obtain one by contacting AoA's Office of Program Development (OPD) at (202) 619–0441. (There is no requirement to use this particular reference in the development of your application.)

Applicants may also request an information sheet on the AoA-supported National Eldercare Dissemination Center, which works with AoA to promote dissemination of the products of Title IV grantees. The Center is available to provide technical assistance on dissemination and utilization to prospective applicants under this priority areas. Prospective applicants are encouraged to utilize this resource. The Director of the Center is Theresa Lambert. She can be reached at (202) 898–2578. Projects funded under this priority area will be expected to work cooperatively with the Dissemination Center.

Applicants under this priority area are limited to current and former Title IV grantees and cooperative agreement awardees. AoA expects to fund approximately 10 to 12 dissemination projects under this priority area. The Federal share of awards will range from approximately $25,000 to $50,000, depending upon the level of activity proposed, for a project period of approximately twelve (12) months.

Section B: Application Deadline: September 10, 1993

III. More Effective Aging Programs and Better Services to Older Americans

3.1 Career Preparation, Education, and Training for the Field of Aging

Under the discretionary program authority of the Older Americans Act, the Administration on Aging (AoA) has given support for almost three decades to encourage the growth of education and training in aging and gerontology in academic and related institutions. During this period, there has been rapid expansion in the knowledge base for aging; faculty, curriculum, and other instructional resources for education and training have increased; and certificate and degree programs for academic and professional careers in the field of aging have grown in quality and number.

National surveys of gerontological program development indicate, however, that growth has been uneven with marked variations by type of institution, by subject/content area, and by instructional program orientation. Overall, Federal funding for behavioral and social gerontological research and training has been declining for more than a decade, a likely contributing factor in the slowdown of programs that train skilled personnel in the care and service of vulnerable older persons. Shortages in gerontological education and training resources have had pronounced effects on minority gerontological education and on the development of minority faculty and graduates; neither resource has kept pace with the needs of growing minority aging population groups. Nowhere is the gap between what is needed and what is being accomplished greater than in the nation's community colleges. Despite the fact that these institutions constitute more than half of the academic institutions in the United States and enroll more than one quarter of the students, community colleges have fewer than 10% of the gerontology programs and 5% of the courses with aging content.

To help meet these challenges in career preparation and gerontology education and training, AoA intends to focus new project grants for education, training, and career preparation in the field of aging on the four sub-priority areas specifed below. These initiatives respond to the career education and training mandates of the Older Americans Act, with special emphasis on the specific provisions added by Section 418 of the 1992 Older Americans Act Amendments. Applications are sought under four general categories:

(1) Career Education Program Development in Institutions of Higher Education with High Minority Student Enrollment;

(2) Faculty and Program Development in Gerontology;

(3) Gerontology Training Program Development in Two-Year Academic Institutions; and

(4) Research and Technology Innovation in Gerontological Education and Training.

3.1.1 Gerontological Training and Education Programs in Institutions of Higher Education With High Minority Student Enrollment

Applications are solicited from academic institutions with substantial enrollments of students from one or more of the four racial and ethnic minority populations: African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans. The applications must focus on the development or improvement/strengthening of gerontology programs which lead to an educational specialty, emphasis, certificate, or degree in gerontology/aging. To maximize discretionary program resources and to promote a level playing field of competition, distinctions are made by AoA under this sub-priority area between those institutions of higher education with high minority student enrollments which (A) have established gerontology programs of education and training to prepare students for careers in the field of aging, and (B) those institutions of higher education which aspire to develop such programs. An established gerontology program is one which offers an academic credential

(e.g. certificate, degree) to students who complete a series of core and elective courses.

To be eligible for funding under either sub-priority area 3.1.1A or sub-priority area 3.1.1B, applicants must give evidence of their designation as a Historically Black College or University, or as a Hispanic Center of Excellence in Applied Gerontology as defined by Section 418 of the Older Americans Act Amendments, or evidence of their membership in the American Indian Higher Education Consortium. Other applicants are also eligible, provided they show evidence of substantial minority student enrollment and minority faculty appointments in the school(s), college(s), department(s) or program(s) whose gerontological education and training activities will be supported under the application.

3.1.1A Gerontology Program Improvement Grants

Applicants in the first category (3.1.1A) should focus on better coordination of instructional programs in gerontology across disciplines and departments, or on working in concert with other colleges and universities on faculty development, enhanced curricula, improved programs of community service to at-risk minority elderly, and other joint undertakings of an enterprising and practical nature. Particular emphases might include faculty and student exchanges among institutions with complementary aging study programs, work-study arrangements as practicum experiences, week-end and evening programs for in-service personnel seeking job certification and career advancement in the field of aging.

AoA plans to make approximately ten (10) awards under sub-priority area 3.1.1A with a Federal share of approximately $150,000 to $175,000 per year for a project period of up to two (2) years. In the making of awards under this sub-priority area, consideration will be given by the Assistant Secretary for Aging to institutions of higher education representative of different geographic areas and of each of the four minority population groups.

3.1.1B Program Development Grants

Applicants under sub-priority area 3.1.1B must show a general plan for program development for the full two-year period and a detailed plan for the first project year. Components of this plan should include: the resources available among existing faculty; the recruitment of new tenure track and/or adjunct faculty; the use of existing courses and development of new courses; student recruitment goals; practice or clinical placement activities; strategies for gaining institutional approval of a certificate or degree program in gerontology; and the use of outside consultation for planning and evaluation.

During the first project year, applicants may use Federal funds for waiver of tuition for courses with aging content to recruit new students to the program. Funds in the second year may be used as stipends for students taking required practice or clinical placement in gerontology. Applicants must demonstrate in their budget allocations, and in the commitment of the leadership of their institution, their intention to sustain the gerontology training program, and continue the courses developed, beyond the period of AoA support.

Applicants in this category, namely academic institutions that are seeking to develop gerontology career preparation, education, and training programs, will be competing for approximately eight (8) awards under sub-priority area 3.1.1B with a Federal share of approximately $125,000 to $150,000 per year for a project period of up to two (2) years. In the making of awards under this sub-priority area, consideration will be given by the Assistant Secretary for Aging to institutions of higher education representative of different geographic areas and of each of the four minority population groups.

3.1.2 Faculty and Curriculum Program Development in Gerontology

Studies and reports funded by the Administration on Aging (AoA) and others have identified a continuing need for faculty and program development in gerontology and geriatrics. These studies indicate that all health and human services professional schools should have faculty with expertise in aging to teach their students about the aging process. The professional schools should be able to assume leadership roles in training personnel to participate in community based long term care service systems for older persons. This sub-priority area is designed to respond to these needs and challenges.

AoA has identified three (3) categories for submission of applications under this sub-priority area, as outlined below. Under this sub-priority area, AoA expects to fund up to five projects, with a Federal share of approximately $100,000 per project and an estimated project duration of seventeen (17) months. Eligible applicants in this priority area are limited to institutions of higher education and national and State professional associations.

(A) *Faculty Development.* AoA is soliciting applications to conduct training activities for in-service faculty development programs that have the following characteristics:

(1) Involve at least 10 persons with instructional or faculty appointments in academic institutions other than applicant organization;

(2) Have structured intermittent or continuous programmatic activity for participating faculty that covers at least two academic semesters or three academic quarters; and

(3) Require written commitment from participants and their academic chair or dean to develop or enhance teaching of aging concepts within one year of completion of their training.

(B) *Aging Content in Professional Academic Training.* AoA encourages the inclusion of aging content in programs leading to certification or an academic degree for persons preparing for employment in occupations that significantly impact on the elderly population. Professionals and paraprofessionals who would benefit from specialized gerontological or geriatric content in their career preparation include, but are not limited to: Physical therapists, counselors, occupational and recreational therapists, home economists, pharmacists, and home health aides. Applications may be submitted which focus their gerontological/geriatric training on other professions and occupations. However, in these cases, the applicant must document that significant gerontological or geriatric components have not been developed for these professions or paraprofessional occupations.

Each application in this category should provide:

(1) A statement clearly specifying the single professional or paraprofessional occupation being targeted;

(2) Evidence that the State Agency on Aging has been significantly involved in the design of the training proposal;

(3) Evidence that the proposed activity is in response to documented needs for aging content in the profession targeted for training;

(4) Evidence that the proposed activity will be on-going once the grant terminates;

(5) A brief description of current gerontology courses or program offered at the institution together with a discussion of how the proposed activity would strengthen or enhance the existing program; and

(6) Written commitments and assurances of support from agencies or organizations significantly involved in the proposed project.

(C) *Curriculum Replication Consortium Programs.* AoA is interested in replicating and disseminating curriculum in which gerontological content has been integrated into the regular training of various professional disciplines such as those listed above. Such efforts should focus on consortia arrangements, whereby the expertise of those institutions, which have successfully integrated gerontology into the curricula of professional disciplines, is utilized to achieve comparable results in other professional schools that have had little or no experience at incorporating gerontology into their curricula.

Applications are solicited from institutions of higher education, or national and state professional organizations, that have demonstrated experience in curriculum development, to work with three to five institutions interested in developing gerontology programs of instruction. The curriculum should focus on aging concepts and best practices for working with the elderly. Each application should include the following:

(1) A statement clearly specifying the profession or paraprofession being targeted;

(2) Written assurances from the institutions that will be involved in the collaborative arrangement; and

(3) Evidence that the collaborative effort is based on a documented need for content in the profession targeted as well as a need for technical assistance by the institutions involved.

3.1.3 Gerontology Training Program Development in Two-Year Academic Institutions

Applications are invited from community colleges, vocational schools, and technical institutes, with accredited two-year post-secondary education programs to develop (3.1.3A) instructional programs for individuals interested in working in the field of aging and (3.1.3B) instructional programs for persons age 50 and older who seek employment or re-employment in the work-force. Applicants under either sub-priority area 3.1.3A, or sub-priority 3.1.3B as described below, may apply for an award with a one or two year project period. Awards to institutions serving one campus location will be made with a Federal share of approximately $75,000 per year. Awards to multi-campus institutions with proposed activities in more than one location will be made with a Federal share of approximately $100,000 per year.

Depending on the number of qualified and highly rated applications received in each category, it is anticipated that approximately ten (10) grant awards will be made, including five (5) for career development, 3.1.3A, and five (5) for older worker training, 3.1.3B. All applicants must demonstrate how their program efforts are designed to reach low income and minority students (African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans). At least one award in each sub-priority category will be made to an institution located in and serving a rural area.

3.1.3A Gerontology Instructional Programs for Career Development

• Applicants requesting support for two-year projects must indicate that their career development project is a substantially new programmatic effort which is designed to qualify students, through certification of program completion, for jobs in the field of aging. Proposals must give consideration to how successful models of two-year gerontology instructional programs might be adapted to their purposes and circumstances. The applicant must also demonstrate that their proposed gerontology program is intended, by the end of the period of AoA support, to be in substantial accordance with the minimal guidelines and standards for such programs set forth by the Association for Gerontology in Higher Education.

• Applicants requesting support for one-year projects must demonstrate that they have an on-going instructional program in gerontology. Project awards may be used to strengthen existing programs to bring them into compliance with quality standards, or to expand and improve other components of their aging programs, including short-term training; older adult education (other than employment training); public information; and other community-oriented activities which involve cooperation with the local Area Agency on Aging and/or Older Americans Act service provider organizations.

3.1.3B Employment Training of Older Adults

• Applicants requesting support for two-year projects must demonstrate that: (1) Their older adult employment project is a substantially new programmatic effort designed to meet the need for employment training of low-income older persons in their enrollment catchment area; (2) that the need for employment training is not adequately addressed by other worker training programs; and (3) that their proposed effort will be coordinated, as appropriate, with employment training programs supported by the Department of Labor, other Federal agencies, and State and local authorities. Proposals must clearly specify what activities will be developed to support recruitment, counseling, and placement of older students who receive instruction in age-integrated classrooms. Advisory boards are expected to be organized to provide input and oversight to planning and implementation. Board membership should include representatives of Area Agencies on Aging, employment agencies, small businesses, corporations, voluntary service groups, and local representatives of aging membership organizations.

• Applicants requesting support for one-year projects must demonstrate that they have an on-going older work training program. Proposals must clearly specify how improvement or expansion of their program will (1) address unmet needs of older workers in their institutional catchment area and (2) operate in cooperation with the program efforts of Area Agencies on Aging, other aging agencies, and Federal/State supported employment training agencies. Among applications of comparable merit, preference will be given to applicants who demonstrate that they will recruit and train, and cooperate with employers to hire older workers who have recently lost their jobs due to corporation downsizing, plant shutdowns, or the relocation of facilities.

3.1.4 Research and Technology: Innovation in Gerontological Education and Training

Applications from academic institutions, higher education organizations, and professional membership societies are invited to (1) develop and demonstrate new uses of instructional technology in gerontological education and training and (2) convert research findings and state-of-the-art materials more effectively and more expeditiously into gerontology course curricula and classroom teaching for students preparing for careers in the field of aging. Among the suggested areas for inclusion in applications under this sub-priority area:

(1) Use of tele-communications and other remote learning approaches for teaching students outside of the traditional on-campus classroom.

(2) Approaches to enrich the course work and teaching of the medical, biological, and health care aspects of aging for undergraduate students who are not preparing for careers in the health care professions.

(3) Strategies for enfusing minority and multi-cultural aging issues into gerontology curricula, course work, and teaching of gerontology.

(4) Strategies and incentives for Schools of Education, other teacher training programs, and national educational associations of school professionals, to include a multi-generational focus in teaching curriculum development and instructional methods.

(5) Strategies for increasing interest and commitment of two year academic institutions in developing comprehensive programs in such areas as career development, continuing education, family education and counseling, and multigenerational activities.

AoA intends to make approximately four (4) awards under this sub-priority area with a Federal share of approximately $100,000 for a project period of approximately seventeen (17) months. Because these projects focus on technology innovation and on model and pilot education projects, the 8% indirect cost limitation on training awards is *not* applicable.

3.2 Supportive Services in Federally Assisted Housing Demonstration Projects

In accordance with Section 410 of the 1992 amendments to the Older Americans Act, the Administration on Aging (AoA) is soliciting proposals for demonstration projects which will develop model programs of supportive services in Federally assisted housing. These projects will involve the network of State and Area Agencies on Aging in the development and operation of these model supportive services programs, working in collaboration with local housing agencies (e.g. State Housing Finance Agencies, Farmers Home Administration (FmHA) State offices, and the Department of Housing and Urban Development (HUD) field offices).

A growing number of frail older individuals residing in Federally assisted housing projects face premature or unnecessary institutionalization due to the absence of, or deficiencies in, availability, adequacy, coordination, or delivery of community based long term care supportive services. Approximately 365,000 older individuals in Federally assisted housing experience some form of frailty, and the number is expected to increase as the general population ages. Often, the supportive service needs of these frail residents are beyond the resources, experience, and capabilities of the housing program management officials and Aging Network agencies. Both HUD and FmHA recognize that housing managers in projects for the elderly generally lack the training and skills necessary to deal with an increasingly frail elderly population. The 1990 and 1992 amendments to the National Affordable Housing Act authorize the positions of service coordinators in HUD and FmHA housing projects.

This priority area is aimed at developing and testing model supportive service programs to frail residents who are aging in place in Federally assisted housing and, where possible, to other frail older persons who need such supportive housing. Applicants for grant awards under this priority area must include the following:

(A) Documentation of the lack of, and need for, supportive services in Federally assisted housing projects located in the geographic area to be served by the proposed project. Such supportive services include: meal services; transportation; personal care, dressing, bathing, and toileting; housekeeping and chore assistance; nonmedical counseling; case management; and services provided under the Older Americans Act, and other legislation, to prevent premature and unnecessary institutionalization.

(B) A comprehensive plan to coordinate with housing facility management to provide services to frail older individuals who are in danger of premature or unnecessary institutionalization;

(C) Information demonstrating initiative on the part of the applicant agency to address the supportive service needs of residents;

(D) Information demonstrating financial, in-kind, or other support available to the applicant from State or local governments, or from private sources;

(E) An assurance that the applicant agency will participate in the development of local Comprehensive Housing Affordability Strategy (CHAS) plans established under the 1990 Cranston-Gonzalez National Affordable Housing Act and seek funding for supportive services under HUD and FmHA programs;

(F) An assurance that the applicant agency will conduct outreach to, and target services for, low-income minority older individuals;

(G) An assurance that, in carrying out the demonstration project, the agency will follow the following guidelines:

(1) Older persons are eligible for services if their level of frailty, based on physical and/or mental disabilities/impairments, limits their ability to perform one or more activities of daily living.

(2) Residents who receive services will be given the opportunity to make contributions to defray the cost of those services, provided their decision to make a contribution can be made in confidence, the applicant agency similarly agrees to accept such contributions in confidence, and all parties concerned are assured that such contributions are truly voluntary and there is no basis for denying services to a resident who has not made a contribution.

(H) A plan to evaluate the eligibility of older individuals for services which includes a professional assessment committee to conduct such evaluations and identify such individuals:

In addition to setting forth in its application a comprehensive plan for the establishment of model programs of supportive services in Federally assisted housing, the applicant shall also propose to carry out an evaluation of the effectiveness of the program and report the results of the evaluation in its final project report.

In 1990, AoA funded a cluster of nine (9) projects similar in purpose to the projects proposed under this priority area. Grantees were either State Housing Finance agencies or State Agencies on Aging. Those demonstration projects developed models for Statewide approaches to increasing supportive services in Federally assisted housing. Information on the projects is available by calling the Office of Program Development of the Administration on Aging at (202) 619–0441. Project activities included:

- Development of Statewide agreements and community plans between Agencies on Aging and housing, health and social services and finance agencies which resulted in increased supportive services to the elderly;
- Public education on issues related to older persons aging in place in Federally-assisted housing facilities and the need for supportive services; and
- Technical assistance to the housing network and building managers on ways to increase the availability of supportive services, working with the elderly and their families, accessing community resources, and methods to acquire information about elderly residents on a regular basis and assessing their service needs.

Projects proposed under this priority area should reflect a reasonable comprehension of the work accomplished under the earlier set of AoA-funded model projects for increasing supportive services to the

elderly in Federally-assisted housing, but must not duplicate those projects. Applicants should also be aware of the AoA-funded National Eldercare Institute on Housing and Supportive Services at the University of Southern California. This Institute provides information on housing as it relates to the needs of the elderly. The Director of the Institute is Dr. Jon Pynoos. He may be reached at (213) 740–1364.

Applicant eligibility is restricted to State Agencies on Aging and Area Agencies on Aging. AoA intends to make approximately five (5) awards with a Federal share of approximately $100,000 per year for a project period of two (2) years.

3.3 Housing Demonstration Program

Housing options are at a premium for increasing numbers of American families. Included in these numbers are older Americans who find that entrance into the "golden years" has limited their housing opportunities by placing them in precarious situations when it comes to securing and maintaining adequate housing and living arrangements. Many older persons living in Federally assisted housing lack access to supportive services. Other older persons are experiencing problems in their efforts to maintain the homes they own or to continue occupying rented residences. Still other key issues involve the rights of frail older tenants and protection from financial exploitation by relatives, landlords, or others.

Recognizing the myriad of housing issues older persons face, Congress has incorporated specific mandates into the 1992 amendments to Title IV of the Older Americans Act. To meet these mandates, the Administration on Aging (AoA) has developed Priority Area 3.2, Supportive Services in Federally Assisted Housing Demonstration (please refer to the preceding priority area in this announcement); and this Priority Area 3.3, Housing Demonstration Programs which focuses on model housing ombudsman and other programs to assist older persons in danger of foreclosure or eviction. This priority area is based on Section 416 of the 1992 Amendments which amends the Older Americans Act by adding Section 429G. Housing Demonstration Programs. It contains two subpriority areas: 3.3.1 Housing Ombudsman Demonstration Projects and 3.3.2 Foreclosure and Eviction Assistance and Relief Services Demonstration Projects.

3.3.1 Housing Ombudsman Demonstration Projects

AoA recognizes the need to develop mechanisms that will provide older persons in publicly assisted housing sorely needed assistance in resolving issues dealing with their care and services and in protecting their rights, safety, and welfare. One innovative model for these purposes now emerging is the Housing Ombudsman, similar in form and function to the now familiar State Long-Term Care Ombudsman programs. This subpriority-area, accordingly, is designed to support the demonstration of model Housing Ombudsman Programs.

Older individuals, living in or attempting to become residents of publicly assisted housing, experience a range of problems related to housing, the condition of homes, and their economic status. Elderly residents of publicly-assisted housing are continuing to "age in place." Moreover, while the current population of public housing residents has become significantly older and more frail, the average age of new tenants moving into these projects has increased. As these tenants age in place, and new tenants with similar service requirements arrive, the demand for services tends to increase. Again, access surfaces as a primary concern. At issue is the opportunity to obtain social and supportive services in the form of direct assistance or referral for problems related to housing and living arrangements. For older tenants at risk of losing their independence, certain services have become essential, among them: information regarding housing options or programs available; counseling on financial, health, social, and familial matters; and the intercession of an advocate on individual and collective matters related to the rights, safety, and welfare of housing residents.

Over the past few years, several attempts have been initiated to address the needs of older people in this area. Major legislation such as the National Affordable Housing Act of 1990, Public Law 101–625, mandates that all States and local jurisdictions submit a Comprehensive Housing Affordability Strategy (CHAS) to the Department of Housing and Urban Development in order to qualify for funding for all federal housing programs. The Act requires the local office assigned to develop the CHAS to consult with social service agencies regarding the housing needs of low-income elderly citizens. Under Sections 8 and 202, the Act also allows for the hiring of Service Coordinators, to be funded through Section 8 funds, who would be responsible for assuring that residents of Section 202/8 housing projects for the elderly are linked to the supportive services they need to continue to be independent.

Many States, through grants from AoA and the Robert Wood Johnson Foundation, have also created the position of supportive service coordinators to assist the elderly to receive needed services. These projects are well worth noting. Not only do the coordinators relieve the increasing pressure on project management but they enable the elderly residents to remain in their apartments as long as possible. Unfortunately, few housing programs/projects for the elderly have supportive service coordinators nor are they equipped to deal with the broad array of questions, issues and problems of older residents of publicly assisted housing. Senior citizen organizations offer a variety of services but those are not necessarily focused on or coordinated with the programs provided in Federally-assisted housing for the elderly.

Applicants under this sub-priority area should propose model Housing Ombudsman Program demonstration projects to provide information, advice, and advocacy services to (1) older individuals participating in Federally assisted and other publicly assisted housing programs and; (2) older people seeking Federal, State, and local housing programs.

Specific services to be provided by the Housing Ombudsman Program demonstration projects should include:

- Direct assistance or referral to services to resolve complaints or problems;
- Information regarding available housing programs, eligibility, requirements, and application processes;
- Counseling or assistance with financial, social, familial, or other related matters that may affect or be influenced by housing problems;
- Advocacy related to promoting the rights of older individuals residing in publicly assisted housing programs and to improving the quality and suitability of housing in the programs;
- Assistance with problems related to housing regarding:

—Threats of eviction or eviction notices;
—Older buildings;
—Functional impairments;
—Unlawful discrimination;
—Regulations of HUD and the Farmers Home Administration (FmHA);
—Disability issues;
—Intimidation, harassment, or arbitrary management rules;
—Grievance procedures;
—Certification and recertification related to programs of HUD and the FmHA; and

—Issues related to transfer from one project or program to another.

Since this competition is for model demonstration projects with implications for other States throughout the nation, applicants should propose procedures covering the above areas that draw upon materials and approaches developed by the statewide Long Term Care Ombudsman program, where appropriate. Demonstration projects might include areas such as developing standards to assist ombudsman with the evaluation and monitoring of their efforts, training programs for staff, and alternative intervention strategies to assure resident needs are being met.

Proposals are invited from State Housing Agencies, State Agencies on Aging, Area Agencies on Aging (AAAs) and other nonprofit entities, including providers of services under the State Long Term Care Ombudsman program and the elder rights and legal assistance development programs as described in chapters 2 and 4 of subtitle A of Title VII of the Older Americans Act.

Applications must include the following:

(1) An assurance that the agency conducting the demonstration program will conduct training of professional and volunteer staff who will provide the Ombudsman services and;

(2) If submitted by an Area Agency on Aging, an endorsement of the program by the State Agency on Aging and an assurance that the State Agency on Aging will work together with the Area Agency on Aging in carrying out the project;

(3) An acceptable plan to involve in the demonstration program the Department of Housing and Urban Development, the Farmers Home Administration, and other agencies through which the agency provides services or which are involved in publicly assisted housing programs; and

(4) A commitment that an evaluation of the effectiveness of the model Housing Ombudsman Program project will be conducted and a report presenting the findings of the evaluation shall be submitted to AoA not later than 3 months after the end of the project.

AoA intends to make approximately five (5) awards under this subpriority with an approximate Federal share of $100,000 per year for an estimated project period of two (2) years.

3.3.2 Foreclosure and Eviction Assistance and Relief Services Demonstration Program

The Administration on Aging (AoA) recognizes the need to break new ground in the formulation and/or implementation of policies and programs to assist older persons more effectively with the resolution of issues related to foreclosure and eviction. Protection of an older person's rights, safety, and welfare are paramount when it comes to housing. Accordingly, AoA has developed this sub-priority area to support the demonstration of model strategies that will allow the effective implementation of laws and regulations designed to prevent or delay foreclosures and evictions among older persons.

It is not uncommon for a provider of legal or supportive services, an officer of landlord tenant court, or the agency accepting an application for subsidized housing to find that the older person, whether home-owner, tenant, or housing applicant, is in a vulnerable position that could have been avoided had they been provided some timely counsel and other assistance. Older persons can find themselves in the position of potential foreclosure or eviction for any number of reasons. Some elders have fallen victim to unscrupulous lenders due to refinancing transactions and find that they can not make outrageous monthly payments. In many of these instances, state usury laws are ambiguous, not applicable or, even worse, non-existent. Other older persons find, too late, that they have unknowingly signed away their homes because they did not, or could not, read the fine print. Sadly, others fall victim to financial manipulation or other abuses by relatives or friends. In short, many older persons have some incapacity that has precipitated the late or missed payments that lead to foreclosure or eviction.

The October 1991 edition of the National Clearinghouse Review, a legal services publication, reported "a significant increase in the number of older persons who have been denied admission to or evicted from rental housing due to, what are often mistaken, perceptions of their inability to live independently." Community opposition, embodied in zoning barriers, to group living arrangements further restricts an older person's choice of housing. In short, there are a host of factors that impinge upon the ability of older homeowners and renters to "age in place" and live as independently as possible.

Federal legislation to remedy these kinds of situations includes the Fair Housing Act Amendments of 1988 (FHAA). Provisions of the Amendments, which are designed to protect the rights of disabled individuals, have proven effective in many cases involving older persons. The 1988 Amendments prohibit discrimination against persons with disabilities in virtually all housing transactions, including sales or rentals. The protections are far reaching. Thus, among those home buyers and/or renters protected against the "refusal to make reasonable accommodation in rules, policies, practices or services, when accommodations may be necessary to afford such person[s] equal opportunity to use or enjoy a dwelling" are those elderly who, in fact, are disabled, as well as those who are unwittingly seen as disabled. Additional safeguards related to state and local zoning, land use and health and safety regulations are applicable to elderly persons with disabilities under other provisions of the FHAA. However, the Amendments are neither a guarantee of effective intervention, nor are they the solution to many practical problems facing the elderly.

Many service providers will readily acknowledge that the appearance of an older person making application for subsidized housing is a signal that something is amiss. Furthermore, it is at this point that intervention in the form of relief or assistance is most critical. This sub-priority area calls for grant proposals that demonstrate effective and timely strategies/approaches for formulating or implementing laws, regulations, and programs that:

(A) Prevent or delay the foreclosure on housing owned and occupied by older individuals or the eviction of older individuals from housing the individuals rent;

(B) Assist older individuals to obtain alternative housing as a result of such foreclosure or eviction;

(C) Assist older individuals to understand the rights and obligations of individuals (including lessor and lessee) under laws relating to housing ownership and occupancy; and

(D) Address the effects of land use/zoning restrictions, as well as escalating property values and the resulting property tax increases, on the housing options of older persons.

The applicant should focus, in particular, on models for:

(1) Assisting older individuals who are incapable of, or have difficulty in, understanding the circumstances and consequences of foreclosure on, or eviction from, housing occupied by that individual; and

(2) Coordinating the program proposed in the application submitted under this priority area with the activities of:

(a) The State Housing Ombudsman Program, where such a program exists, or where such a program is proposed;

(b) Tenant (and community) organizations;

(c) Mediation organizations for landlord-tenant concerns;

(d) Entities that provide public or other subsidized housing; and

(e) Area Agencies on Aging.

This coordination should facilitate the most effective assistance or referral to services for relocating or preventing the eviction of older individuals from housing they occupy.

Applications are invited from State Housing Agencies, State Agencies on Aging, State Housing Ombudsman programs and State legal assistance development programs as described in chapters 2 and 4 of subtitle A of Title VII of the Older Americans Act.

Applications must include the following:

(1) An acceptable plan for the involvement, in the demonstration program, of the Department of Housing and Urban Development, the Farmers Home Administration, and other agencies through which services are provided, or which are involved in publicly assisted housing programs;

(2) If submitted by an entity other than the State Agency on Aging, an endorsement of the program by that agency and assurances that the State will work together with the area agency on aging; and

(3) A commitment assuring that an evaluation of the effectiveness of the model Foreclosure and Eviction Assistance and Relief Services Demonstration Project will be conducted and a report presenting the findings of the evaluation shall be submitted to AoA not later than 3 months after the end of the project.

AoA intends to make approximately five (5) awards under this sub-priority area, with an approximate Federal share of $75,000 each year for project periods of two (2) years in duration.

3.4 Statewide Legal Hotlines for Older Americans

Under this priority area, consistent with Section 424(a)(2) of the Older Americans Act which provides for the support of "demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs," AoA is inviting applications from public and/or non-profit organizations currently engaged in the provision of legal services to the elderly, to develop and establish Statewide Legal Hotlines for older Americans. Background material on the current program of Statewide Legal Hotlines is presented below, followed by a description of the objectives, structure, and tasks to be carried out by projects proposed for funding under this priority area.

In 1985, after a prototype Statewide Legal Hotline in Pennsylvania showed considerable promise, the Administration on Aging (AoA) funded the American Association of Retired Persons/Legal Counsel for the Elderly (AARP/LCE) to further develop and test this innovative method of delivering a high volume of quality legal assistance to older people. A Legal Hotline utilizing paid, specially-trained, and experienced lawyers was developed to provide unlimited free legal advice to all State residents age 60 and older, regardless of their level of income or resources. The Hotlines also provided legal briefs and related assistance such as document reviews and calls/letters to third parties, but only when there was a likelihood that this would resolve the problem. Services were provided statewide by means of toll-free telephone lines. The Legal Hotlines was fully computerized, therefore minimizing, if not eliminating, the need for paper, files, and administrative staff.

The Legal Hotline concept took hold in the ensuing years. Statewide hotlines have been established in the District of Columbia, Texas, Florida, Michigan, Ohio, Maine, New Mexico and Arizona. An evaluation after four years of legal hotline operation showed that Legal Hotlines and corresponding referral service resolved 81% of callers legal questions and 50% of their legal problems. However, a national survey showed that as many as two million older households may still have an unmet legal need each year. The expansion of Legal Hotlines would make legal assistance available to many of these older people.

3.4.1 State Legal Hotline Projects

Applications to develop and operate Legal Hotlines submitted under this priority area should be modeled after previously funded AoA Legal Hotlines. It is the applicant's responsibility to review and adapt the program experience in those States and the District of Columbia to the resources, needs, and realities of their State. Applicants should recognize and reflect in their project plan that considerable time is needed to cement the range of endorsements and agreements, and to develop other resources, essential to both the developmental and the operational phases of the Legal Hotlines project. The applicant is expected to submit a fully developed Legal Hotlines program application, including solid commitments from the appropriate participating organizations and individuals.

Based upon the experience to date, certain elements are essential to the successful establishment and effective operation of a Statewide Legal Hotline to serve older persons. The applicant must address, at a minimum, these elements:

I. Staffing.

A. A full time managing attorney;

B. The equivalent of two additional full-time attorneys to take calls and respond directly to older persons in need of assistance; and

C. Staff persons to answer the phones when the attorneys are busy.

II. Telephones.

A. Two incoming toll-free lines, and one outgoing WATTS line.

B. Experience has shown that the total telephone budget will be a minimum of $20,000–$25,000 per year after the Legal Hotline is operational.

III. Computer equipment.

A. An allocation of approximately $20,000 for computer equipment.

B. Legal Hotline software (included in the above mentioned $20,000) can be researched through the American Association of Retired Persons/Legal Counsel for the Elderly (AARP/LCE).

IV. Reduced attorneys fees.

A commitment to recruit a statewide panel of attorneys in private practice willing to accept significantly reduced hourly rates as well as fee caps on common services such as $45–$50 for a simple will.

V. Training program.

Develop and provide a training program for the Legal Hotlines attorneys and modify reference materials used in other Legal Hotlines to conform with your State law.

In approving applications for funding, the Assistant Secretary for Aging will pay particular attention to those which focus on providing services (1) to ethnic and/or racial minority older persons and (2) to those elderly in greatest economic and social need. Applications meeting the following criteria will receive preference:

A. Applications from States which rank in the top third of all States in either (1) population age 60 and above, or (2) percentage of elderly population whose income is less than 125% of the poverty line, or (3) percentage of elderly population comprised of minority elderly (African-Americans, Hispanics, Asians/Pacific Islanders, and Native Americans).

B. Applications that show plans for special outreach activities to low income and minority older populations;

C. Applications which demonstrate the ability to deliver services to the non-English speaking population;

D. Applications which demonstrate that Title III/VII and Legal Services Corporation funded legal services

programs within the State are willing to coordinate their services with the proposed Legal Hotline;

E. Applications that offer the largest grantee cost sharing, and thus request the fewest AoA dollars. (The minimum grantee share of project costs is 25%);

F. Applications which offer a practical plan for funding the Legal Hotline once the AoA grant ends.

Endorsements: Applications should include the endorsement of the State Agency on Aging and the State Bar Association, the voluntary and/or mandatory Bar, whichever is appropriate. Special justification must be provided by the applicant if these endorsements are not included in the application.

Geographic Coverage: It is highly unlikely that a single Legal Hotline would be adequate in responding to the unique size and diversity of the older population in California and New York. Therefore, AoA will consider applications for a Legal Hotline which serves Northern California or Southern California, but not both areas. Similarly, AoA will consider applications which serve either (1) New York City, Nassau, and Suffolk Counties or (2) the rest of New York State, but not both areas. No other exceptions will be made to the requirement that Legal Hotlines serve the entire State.

AoA expects to fund two (2) to three (3) State Legal Hotlines under this priority area. The Federal share for the projects will be approximately $100,000 per year for an expected project period of three (3) years.

3.4.2 Technical Assistance Project for Statewide Legal Hotlines

AoA also intends to award a project grant under this priority area which will provide technical assistance, training, and capacity-building services to the new Statewide Legal Hotline projects. Applicants for the training, technical assistance, and capacity-building grant must demonstrate experience and understanding of the operations of Statewide Legal Hotline projects. The applicant is expected to design a detailed plan for providing advice, guidance, and assistance to the State Legal Hotline projects through their development and operational phases, and their transitional phase to self-support at the conclusion of AoA funding.

The applicant should plan on assisting three (3) new Statewide Legal Hotline projects, including a minimum of one (1) site visit per project and a minimum of two (2) teleconferences with project directors in each funding period. The applicant should also schedule one (1) two-day cluster meeting with project directors within the first three (3) months of each budget period for orientation, information sharing, training, and discussion of documentation and reporting. The winning applicant will be required to prepare year-end reports and a final report which describe the progress, status, and accomplishments of the projects in building and conducting the Statewide Legal Hotlines, and include a detailed summation of efforts to generate funding to sustain the Hotlines after AoA funding ends.

It is anticipated that the Federal share for this technical assistance, training, and capacity-building project will be approximately $100,000 per year for an expected project period of three (3) years.

3.5 Minority Management Training Program Projects

Under this priority area, pursuant to Section 401 of the Older Americans Act, the Administration on Aging (AoA) plans to fund a Minority Management Training Program comprised of special training projects that increase the number of qualified individuals from the four racial and ethnic minority populations, African-Americans, Hispanics, Pacific/Asians, and Native Americans, in key management and/or administrative positions in State and Area Agencies on Aging, and other agencies and organizations which impact on older persons, especially those who are at-risk of losing their independence. Project proposals are solicited from State and Area Agencies on Aging, Indian Tribal Organizations funded under Title VI of the Older Americans Act, educational institutions and other public and nonprofit organizations. Proposals should include the endorsement of the appropriate State Agency on Aging and other participating agencies, organizations and institutions.

The Program goal is to increase the professional credentials and experiences of project trainees by helping them to make the transition from staff level positions to managerial and/or administrative positions. Preferred trainees targetted are highly motivated minority professionals and paraprofessionals, who have bachelor's and/or advanced degrees and/or several years of significant aging program experiences. Participating program host agencies provide managerial or administrative trainee positions in their work settings. Results expected during and/or upon completion of the training experience, are that the trainees are either employed in permanent positions as a manager, supervisor or administrator in the host agency; or the trainees are highly qualified and referred to other appropriate aging related agencies, institutions or organizations having comparable position vacancies, by the project grantee. Trainee selection and placement is based upon a strong commitment to work in the field of aging.

Applicants should seek commitments from host agencies that are willing to provide a specified, varied work experience with ample opportunities for the trainees to assume managerial and/or administrative roles. Trainee sponsorship and placements are strongly encouraged in State and Area Agencies on Aging. Trainees should be given on-the-job instruction, support, counseling, and feedback about the work performance. The project grantee must provide administrative support to trainees and host institutions, on-site monitoring of the work experiences on a periodic basis, and assistance in the placement of trainees when the training experience is completed.

Project applications should include information about the project grantee, host agencies, procedures for recruiting and selecting trainees, description of the traineeship and work experiences, and required supervisory associations. Applicants must include (1) a plan for assuring placement of trainees in a management or administrative position in an organization that serves older persons, upon completion of the training program and (2) an evaluation component for tracking the progress of the trainees' advancement to management positions and in carrying out their managerial responsibilities. Stipends provided under this priority area are expected to be commensurate with the cost of living in a particular geographic area and the qualifications and experience of a particular trainee. Applicants should endeavor to obtain other financial support for the trainee program. Host agency cost sharing is strongly encouraged.

AoA expects to fund approximately five projects under this priority area with a Federal share of approximately $100,000 per project per year, and an estimated project duration of approximately two (2) years.

Part III. Information and Guidelines for the Application Process and Review

Part III of this Announcement contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along

with detailed instructions for developing and assembling the application package for submittal to the Administration on Aging (AoA). General guidelines on applicant eligibility were provided in Part I. Specific eligibility guidelines were provided in Part II under certain priority areas.

A. General Information

1. Review Process and Considerations for Funding

Within the limits of available Federal funds, AoA makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this Announcement. The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening:* To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in Section D below, *will not* be reviewed and will receive *no* further consideration for funding.

c. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section F, below. This independent review of applications is performed by panels consisting of qualified persons from outside the Federal government and knowledgeable non-AoA Federal government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments:* AoA may solicit views and comments on pending applications from other Federal departments and agencies, State and Area Agencies on Aging, interested foundations, national organizations, experts, and others, for the consideration of the Assistant Secretary for Aging in making funding decisions.

e. *Other Considerations:* In making funding award decisions, the Assistant Secretary for Aging will pay particular attention, as appropriate, to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions will also reflect the equitable distribution of assistance among geographical areas of the nation, and among rural and urban areas. The Assistant Secretary for Aging also guards against wasteful duplication of effort in making funding decisions.

f. *Other Funding Sources:* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. *Decision-Making Process:* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

h. *Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be several months in duration. This length of time is required to review and process grant applications.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications under Section A priority areas is *July 19, 1993.* The closing date for submission of applications under Section B priority areas is *September 10, 1993.* Applications must be either sent or hand-delivered to the address specified in Section D, below. Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will meet the deadline if it is either:

1. Received at the mailing address on or before the applicable deadline date; or

2. Sent before midnight of the applicable deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the applicable deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the applicable deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadlines are considered late applications. The Office of Administration and Management will notify each late applicant that its application will not be considered under the applicable grant review competition.

AoA may extend either the *July 19, 1993* or the *September 10, 1993* deadline for applications because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail, or when AoA determines an extension to be in the best interest of the government. However, if AoA does not extend either deadline for all interested applicants, it may not waive or extend the deadline for any applicant(s).

C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Successful applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share must equal at least 25% of the total project cost. Applicants should note that, among applications of comparable technical merit, the greater the non-Federal share the more favorably the application is likely to be considered.

The one exception to this cost sharing formula is for applications from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95–134, as amended, which requires the Department to waive "any requirement for local matching funds under $200,000."

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred *direct or indirect* costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under Federal rules established, as appropriate, by OMB Circulars A–21, A–87, and A–122. If the required non-Federal share is not met by a funded project, AoA will disallow any unmatched Federal dollars. A common error is to match 25% of the Federal share rather than 25% of the entire project cost.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will *not* be reviewed and will receive *no* further consideration for funding.

Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must *not* exceed forty (40) pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

The following documents are excluded from the 40 page limitation: (1) Standard Forms (SF) 424, 424A (including up to a four page budget justification) and 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status; and (4) indirect cost agreements. Within the forty (40) page limitation, the following guidelines are suggested:

—Summary description (one page);
—Narrative (approximately twenty-five to thirty pages);
—Applicant's capability statement, including an organization chart, and vitae for key project personnel (approximately five to ten pages) and;
—Letters of commitment and cooperation (approximately four pages).

2. Applications submitted under Section A priority areas must be either postmarked by midnight, *July 19, 1993*, or hand-delivered by 5:30 p.m., Eastern Time, on *July 19, 1993* to the address provided below. Applications submitted under Section B priority areas must be either postmarked by midnight, *September 10, 1993*, or hand-delivered by 5:30 p.m., Eastern Time, on *September 10, 1993* to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–93–1.

3. Applicants must meet any eligibility requirements specific to the priority area under which they have submitted their application. (For everyone's benefit, please be sure that the priority area has been clearly identified in the application).

UNDER NO CIRCUMSTANCES WILL APPLICATIONS THAT DO NOT MEET THESE SCREENING REQUIREMENTS BE ASSIGNED TO REVIEWERS.

E. Funding Limitations on Indirect Costs

1. Training projects awards to institutions of higher education and other non-profit institutions are limited to a Federal reimbursement rate for indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. Differences between the applicant's approved rate and the 8% limitation may be used as Federal cost sharing. See Section J–2, Item 6j, below.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. Applicants who do not have a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and in compliance with relevant OMB Circulars.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations set forth in the individual priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance: 20 points

a. Does the application pinpoint relevant economic, social, financial, institutional or other problems requiring a solution?

b. Is the need for the proposed project clearly demonstrated and supported by documentation? Are the needs of low income and minority elderly appropriately discussed?

c. Are the principal and subordinate objectives and activities of the project clearly stated, justified, innovative (as appropriate), and relevant to the issue/priority area?

d. Does the application include relevant and significant data in providing a thorough discussion of the current state of knowledge relevant to the proposed project?

2. Expected Results and/or Benefits—Dissemination and Utilization: 30 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are important anticipated contributions to policy, practice, theory and/or research clearly indicated? Does the application specify how the expected results will directly and tangibly benefit older people?

b. Does the application provide a realistic and appropriate plan of activities for disseminating at propitious times the results, findings, and products of the project. Does the application describe how its products will be disseminated to well-chosen audiences as well as what uses those audiences are likely to make of the project's findings, results, and products?

3. Approach: 30 points

a. Does the application provide a sound and workable plan of action pertaining to the scope of the project and specify how the proposed work will be accomplished?

b. Are persuasive reasons offered for taking the proposed approach as opposed to others? Does the application clearly explain the methodology for determining if the results and benefits identified are being achieved?

c. Has the application clearly identified the kinds of data to be collected and analyzed, and included an evaluation component which identifies and discusses appropriate criteria for assessing the performance and results of the project?

d. Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be achieved? Is a time-line chart or its equivalent employed to list project activities in chronological order and show the target dates for the projected accomplishments?

e. Has the application identified and secured the commitment of each of the key cooperating organizations, groups, and individuals who will work on the project and provided an adequate description of the nature of their effort or contribution?

4. Level of Effort: 20 points

a. Are the project management, staff resources and time commitments adequate to carry out the proposal effectively and efficiently? Is the staff chart consistent with the project plan expressed in the Approach section of the Program Narrative?

b. Are the key staff well qualified for this project? Are consultants and advisers used appropriately? If volunteers will be used, is there adequate supervision and support from project staff?

c. Does the budget justification adequately describe the resources necessary to conduct the project? Is the budget reasonable in terms of the intended results?

d. Are the authors of the proposal, their relationship with the applicant

agency and their intended role in the project, if any, identified?

G. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements. *Note*: The original copy of the application *must* have an original signature in item 18d on the SF 424.
- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Project summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letters of Commitment and Cooperation;
- A copy of the *Check List of Application Requirements* (See Section K, below) with all the completed items checked.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be numbered sequentially. In order to facilitate the handling and reproduction of the application for purposes of the review, *please do not use covers, binders or tabs.* Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

H. Communications With AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified by mail of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Office of Program Development by telephone at (202) 619–0441.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

I. Background Information and Guidance for Preparing the Application

1. Current Projects and Previous Project Results

In the Program Narrative of the application (see Section J–6 below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on *Current AoA Projects* may be obtained by contacting the Office of Program Development at 202/619–0441. Regarding *Completed AoA Projects*, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Eldercare Dissemination Center; the National Technical Information Service (NTIS), a clearinghouse and document source for Federally sponsored reports; Ageline Database, a bibliographic database service sponsored by the American Association of Retired Persons, available online through BRS and DIALOG; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers: (1) National Eldercare Dissemination Center, National Association of State Units on Aging, 1225 I Street, NW., suite 725, Washington, DC 20005, (202) 898–2578.

The Center maintains a computerized database of descriptions of recent AoA grant products including reports, studies, training materials, technical assistance documents, and audio-visual products. Staff are available to scan the database for products and tailored printouts may be requested. The Center has also established a product repository of over 900 products generated under Title IV grants. The repository serves as a backup source for original documents from which duplicates can be produced when copies are no longer available from the grantees. Information about products and searches of this database can be requested by telephone (800–989–6537) and by written request. In addition, in June, 1993, it will also be available via modem for on-line searches (800–989–2243).

(2) National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4600.

(3) Ageline Database

(a) BRS Customer Service, 8000 Westpark Drive, McLean, VA 22102, (800) 345–4BRS.

(b) DIALOG Customer Service, 3460 Hillview Avenue, Palo Alto, CA 94304, (800) 3DIALOG, (415) 858–2700 (in California).

(4) U.S. Government Printing Office, Acquisition Unit, Library Programs Service, North Capitol and H Streets NW., Washington, DC 20401, (202) 275–1070.

2. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- The most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- Dissemination starts at the beginning of a project not when it is completed;
- Potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- Dissemination is a networking process;
- At a minimum, dissemination includes getting your final products into the hands of appropriate users and making presentations at conferences; and
- Coordination with other related projects may increase the chances of your products being used.

J. Completing the Application

In completing the application, please recognize that the set of standardized

forms and instructions is prescribed by the Office of Management and Budget (approved under OMB control number 0348–0043) and is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. First-time applicants, in particular, may have some misgivings that they have not crossed the final t or dotted the last i of their application. Any applicant should, of course, take reasonable care to avoid technical errors in completing the application, but the substantive merits of the project proposal are the determining factors. In these instructions, we offer several pointers aimed at clarifying matters, overcoming difficulties, and preventing the more common technical mistakes made by applicants. If the need arises, please call (202) 619–0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this Federal Register announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the Federal Register announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of completed forms have been provided as part of this announcement. These samples are to be used as a guide only. Be sure to submit your application on the blank copies. Please prepare your application consistent with the following guidance:

1. *SF 424, Cover Page:* Complete only the items specified in the following instructions:

Top Left of Page. In the box provided, enter the number of the priority area under which the application is being submitted.

Item 1. Preprinted on the form.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Provide the legal name of applicant; the name of the primary organizational unit which will undertake the assistance activity; the applicant address; and the name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the box provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. The title should describe concisely the nature of the project. Avoid repeating the title of the priority area or the name of the applicant. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

Item 12. Preprinted on form.

Item 13. Enter the desired start date for the project, beginning on or after September 1, 1993 and the desired end date for the project. Projects may be from 12 to 48 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. All budget information entered under item #15 should cover: (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months. The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b–15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c–15e, as applicable. It is important that the dollar amounts entered in sub-items 15b–15e total at least 25 percent of the total project cost (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

Check: Please check item 15 to make sure you have presented budget amounts only for the first year if you are proposing a multi-year project. A common error is to present budget totals for a full project period of 24, or 36, or 48 months in item 15.

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form (SF424A) is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item columns/blocks are superfluous and should be regarded as not applicable. The applicant should consider and respond to only the budget items for which guidance is provided below. Section A—Budget Summary and Section B—Budget Categories should include both Federal and non-Federal funding for the proposed project covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months.

Section A—Budget Summary

On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Use only the last column under Section B, namely the column headed Total (5), to enter the total requirements for funds (combining both the Federal and non-Federal shares) by object class category.

A separate *budget justification* should be included which shows the breakdown of budget cost items by Federal and non-Federal shares and fully explains and justifies each of the major budget items, personnel, travel, other, etc., as outlined below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

Line 6a—Personnel: Enter total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Justification: Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment is $500 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate a substantial part (one-third, or more) of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) The applicant is a State or local government agency.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in 45 CFR part 74), Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, stipends, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the Federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and expected use of income in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs: Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project

This section should be completed only if the total project period exceeds 17 months.

Line 20—Totals: Enter the estimated required *Federal* funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and, if applicable, for months 25 through 36 under "(c) Second," for months 3748 under "(d) Third."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable.

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Project Summary Description

On a separate page, provide a project summary description headed by two identifiers: (1) The name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project "abstract" which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

6. Program Narrative

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the priority area under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in Section F above. The format of the narrative should, in fact, parallel the criteria, beginning with an integrated discussion of (A) the project's objectives, relevance, and significance, which provide the framework for a discussion and justification of (B) the results/benefits that you expect the project to accomplish. The next section of the narrative follows with a detailed explanation of (C) the approach(es) the project will undertake to achieve its objectives; and the narrative concludes with (D) the level of effort needed to carry out the project, in terms of staff, funding, and other resources.

Please have the narrative typed on one side of 8 1/2" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should also identify the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

This narrative guidance is in accordance with that provided in OMB Circular A–102. The checklist reporting form (Section K, below) is consistent with that approved under OMB control number 0937–0189.

7. Organizational Capability Statement and Vitae for Key Project Personnel

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its record for preparing cogent and useful reports, publications, and other products. An organization chart showing the relationship of the project to the current organization should be included. Vitae should be included for key project staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It will help in properly preparing your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

____One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;

____SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;

____SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);

____The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;

____As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;

____Proof of nonprofit status, as necessary;

____Summary description;

____Program narrative;

____Organizational capability statement and vitae for key personnel;

____Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a forty (40) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. Indicate the priority area in the box at the top left hand corner of the SF 424.

4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

5. To meet the cost sharing requirement (see Section C above), you must, at a minimum, match $1 for every $3 requested in Federal funding to reach 25% of the *total* project cost (except for Priority Area 1.4 which requires, at a minimum, a grantee share of 50% of total project costs). For example, if your request for Federal funds is $90,000, then the required minimum match or cost sharing is $30,000. The total project cost is $120,000, of which your $30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

8. Do *not* include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one project application is submitted, each should be submitted under separate cover.

11. Before submitting the application, have someone other than the author(s): (1) Apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of

the trial run and then make whatever changes you deem appropriate.

12. Applications submitted under Section A priority areas must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on *July 19, 1993* to the address below. Applications submitted under Section B priority areas must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on *September 10, 1993* to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., room 4644, Washington, DC 20201, Attn: AoA–93–1.

Fernando Torres-Gil,

Assistant Secretary for Aging.

BILLING CODE 4130-02-U

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: Not Applicable (N.A.)	State Application Identifier: N.A.
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.048

TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

Nation-wide Applicability

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

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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	93.048	$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
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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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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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE 4.3.2

2. DATE SUBMITTED: July 12, 1993

Applicant Identifier:

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE: Not Applicable (N.A.)

State Application Identifier: N.A.

4. DATE RECEIVED BY FEDERAL AGENCY:

Federal Identifier:

5. APPLICANT INFORMATION

Legal Name: ABC Organization

Organizational Unit: Division on Aging

Address (give city, county, state, and zip code):
9876 Marcus Avenue
Middletown, Kansas 12345

Name and telephone number of the person to be contacted on matters involving this application (give area code):
William White
(678) 901-2345

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 6 7 — 8 9 0 1 2 3 4

7. TYPE OF APPLICANT: (enter appropriate letter in box) N

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School Dist
I State Controlled Institution of Higher Learning
J Private University
K Indian Tribe
L Individual
M Profit Organization
N Other (Specify): Non-profit Agency

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 0 4 8

TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Improved Home and Community Based Care

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):
Nation-wide Applicability

13. PROPOSED PROJECT

Start Date	Ending Date
09/01/93	08/31/95

14. CONGRESSIONAL DISTRICTS OF

a. Applicant: 5

b. Project: 2-4

15. ESTIMATED FUNDING:

a. Federal	$ 75,000	.00
b. Applicant	$ 25,000	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$ 100,000	.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: Jane Green

b. Title: Executive Director

c. Telephone number: (567) 890-1234

d. Signature of Authorized Representative:

e. Date Signed: July 8, 1993

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

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	93.048	$	$	$ 75,000	$ 25,000	$ 100,000

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 50,000
b. Fringe Benefits					15,000
c. Travel					4,000
d. Equipment					1,000
e. Supplies					2,000
f. Contractual					4,000
g. Construction					N.A.
h. Other					9,000
i. Total Direct Charges (sum of 6a - 6h)					85,000
j. Indirect Charges					15,000
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$ 100,000
7 Program income	$	$	$	$	$

SAMPLE

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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)	$ 25,000	$	$	$ 25,000

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)	$ 100,000	$	$	$

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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SAMPLE

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 and authorized representative, access to any 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 (43 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 and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistence 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 component 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 _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal Appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or a Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbing," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the requested certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization _____

Authorized Signature _____
Title _____
Date _____

Note: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, SW., room 4644-COHEN; Washington, D.C. 20201-0001

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements, Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take a action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignifiant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)

Check [ ] if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue SW., Washington, DC 20201.

Signature _____

Date _____

Title _____

Organization _____

[FR Doc. 93–11696 Filed 5–18–93; 8:45 am]

BILLING CODE 4130–02–U

federal register

Wednesday
May 19, 1993

Part III

Environmental Protection Agency

40 CFR Part 63

Approval of State Programs and Delegation of Federal Authorities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4652-7]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing regulations to provide guidance, relating to approval of State programs, that EPA is required to publish under section 112(1) of the Clean Air Act Amendments (CAA) of 1990. Section 112(1)(2) of the CAA requires EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP's) and guidance concerning requirements for the prevention and mitigation of accidental releases of toxic substances into the ambient air. This proposed rule contains guidance specifically relating to the approval of rules or programs that States can implement and enforce in place of certain Federal section 112 rules, and the partial or complete delegation of Federal authorities and responsibilities associated therewith. Submission of such rules or programs by the States is entirely voluntary.

Once granted approval, State rules and 40 CFR part 70 operating permit conditions resulting from approved State programs would be Federally enforceable and replace the otherwise applicable Federal requirements within a State or local jurisdiction.

This proposed rule also establishes guidance for States regarding the implementation and enforcement of section 112(r), including the registration of facilities subject to these requirements.

Guidance to review high-risk point sources; to establish and to maintain various technical assistance activities, including an air toxics clearinghouse; and to establish a grant mechanism for the purpose of assisting States in developing and implementing air toxics programs as well as further program specific guidance on the development of State accidental release prevention programs will be addressed in the future.

Only States seeking to implement and enforce some provisions of their own air toxics programs in lieu of rules resulting from the Federal program under section 112 need to obtain approval under this proposed rule.

DATES: *Comments.* Comments must be received on or before June 18, 1993.

Public Hearing. Requests for a public hearing must be received by June 2, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE-131), ATTN: Docket No. A-92-46, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing: If a public hearing is held, it will be at 9 a.m. (call the number below for the date) at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pam Smith, Pollutant Assessment Branch, Emission Standards Division, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD-13), Research Triangle Park, North Carolina 27711, telephone (919) 541-5319.

Docket. The docket listed above under **ADDRESSES** contain supporting information used in developing the proposed rule. The docket is available for public inspection and copying from 8:30 a.m.-12 p.m. and 1:30 p.m.-3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information on the proposed rule, contact Tim Ream, Pollutant Assessment Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 or contact Sheila Q. Milliken, Pollutant Assessment Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2625.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Purpose
II. Summary of Proposed Rule
III. Rationale
A. Eligibility and Scope of Approval
B. Criteria common to all approval options
C. Approval of a State rule which adjusts a section 112 rule
D. Approval of a State rule that substitutes for a section 112 rule
E. Approval of a State program that substitutes for section 112 emission standards
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I. Background and Purpose

Many States have developed or are developing air toxics programs under State authorities. The Congress was very much aware of the States' air toxics programs in the course of developing the CAA. (*See, e.g.* S. Rep. No. 228, 101st Cong. 1st Sess. 192 (1989).) These programs, developed to address specific State needs, may differ widely from Federal rules being developed by EPA under section 112 of the CAA for the control of emissions of HAP's. Existing State programs may result in controls that are more stringent than, equivalent to, or less stringent than controls resulting from corresponding Federal standards.

From discussions with States and other interested parties concerning approval of State programs under section 112(l), EPA has learned that some States want to continue to implement and enforce the requirements of their own air toxics programs despite the CAA requirements under section 112 relating to air toxics. The prospect of simultaneous implementation and enforcement of both Federal and State air toxics programs in some States has caused concerns to be expressed regarding the possible effects on the States and the regulated community. A primary concern stems from what could be called "dual regulation", a situation in which sources are subject to differing State and Federal program requirements. Dual regulation may burden regulated sources and permitting and enforcement agencies for several reasons. First, permits resulting from dual regulation are necessarily longer and more expensive to develop and approve due to the need to specify separate sets of operating conditions derived from both Federal and State regulations. Second, compliance and enforcement costs may be greater because of two sets of conditions that must be enforced. Third, and perhaps most critically, permit conditions that result from dual regulation may not always be complementary, and in some instances, may even be fundamentally inconsistent in instances where the Federal and State programs may require measures that are technically incompatible. In this latter instance it may be physically difficult or

impossible for a source to employ simultaneously the controls and/or work practices mandated by both Federal and State regulations.

To avoid dual regulation and the attendant complications, as well as to preserve the integrity of their own air toxics programs, some States have contended that section 112(l) of the CAA authorizes EPA to delegate authority to the States to implement and enforce their rules or programs in lieu of Federal rules under section 112. Many States have expressed this argument to EPA through a series of discussions and informal conversations prior to publication of today's proposal. Moreover, some States have contended that any rules or programs that are approved by EPA under the authority of section 112(l) should be Federally enforceable, which would result in reduced "potential to emit" of sources that have regulated emissions under State air programs. (Reducing a source's potential to emit, under section 112, has benefits that are discussed later in this section of today's notice).

The EPA agrees that section 112(l) authorizes EPA to delegate certain section 112 authorities to States. Today's proposed rule would offer guidance intended to assist States (and local agencies) in submitting rules and programs for approval by EPA. After approval by EPA, States may implement and enforce their rules and programs in place of certain Federal rules promulgated under section 112, with the approved rules and programs being Federally enforceable. Section 112(l) also provides that any delegation of EPA's authorities under today's proposed rule shall not include the authority to set standards or other emission limitations or requirements less stringent than those promulgated by EPA under the CAA. The regulation in today's notice, when promulgated, will fulfill the requirement for such guidance.

Today's proposed rule would provide potential benefits to sources of hazardous air pollutants and to permitting and enforcement agencies by addressing the dual regulation issue and related problems. This proposed rule seeks to achieve the goal of allowing EPA and the States to work together to minimize potential program redundancies and inconsistencies and to reduce the costs and time involved in permit review and issuance. In maximizing the efficiency of this process, savings are initially realized by Federal and State agencies, thereby reducing costs that might otherwise be borne by sources in the form of higher permit fees. The cost savings will be realized without sacrificing any environmental protection.

An additional significant benefit may accrue to some regulated sources from today's proposed rule. All sources of listed HAP's are defined under section 112(a) of the CAA as either "major" or "area." These definitions are based on a source's "potential to emit", which has been defined previously in EPA rules, including the 40 CFR part 70 operating permit program, as "the maximum capacity of a stationary source to emit any air pollutant under its physical or operational design" (see § 70.2). The part 70 definition goes on to say that "any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator." Although section 112 does not include a definition of "potential to emit," EPA plans to propose a definition that is consistent with the part 70 definition in the general provisions for part 63 (to be codified in subpart A). The implication of this definition is that the potential to emit of sources controlled by State regulations can be reduced only when the applicable State regulations are made Federally enforceable. Hence as State regulations become Federally enforceable, a substantial number of sources could shift from major source status to area source status, thereby possibly reducing these sources' cost of complying with the CAA. This cost reduction could be achieved without any decrease in emission reduction. Future EPA rulemakings may supplement the general provisions for section 112 rules by further clarifying how and when sources may limit their potential to emit HAP's below major source threshold levels. Given the opportunity available to sources under part 70 to limit their potential to emit, EPA is seeking comment on whether and how this subpart might further extend sources' opportunities to limit their potential to emit. EPA is also interested in comment on the extent to which the approach proposed here is consistent with the approach adopted in part 70.

II. Summary of Proposed Rule

Today's proposed regulations would establish guidance for EPA approval of State (or local, Tribal or Territorial) air toxics control rules (i.e., promulgated regulations) or programs (i.e., any collection of statutory, regulatory or policy requirements) that are at least as stringent as otherwise applicable Federal section 112 rules. No revision to the State's rule or program is federally approved and enforceable unless and until it is approved by EPA through the full 112(l) process. After approval, State rules and operating requirements incorporated in a part 70 permit that result from approved State programs would be Federally enforceable and substitute for the otherwise applicable Federal requirements in that State or local jurisdiction.

Agencies with approved 40 CFR part 70 operating permit programs have the responsibility to begin immediately the implementation and enforcement of all applicable section 112 rules. Authorities granted along with part 70 program approval will not allow for the permitting agency to implement and enforce a State rule or program that differs in any respect from an existing Federal rule.

To gain EPA approval of a State rule or program under today's proposed rule, certain approval criteria must be met. These criteria require that a submission for approval of a rule or program must demonstrate adequate authority adequate resources, an expeditious implementation schedule and an adequate enforcement strategy, and that the approved rule or program is likely to satisfy, in whole or in part, the objectives of the Act. In addition, one of three sets of specific criteria must be met. The three sets of specific criteria correspond to three options for requesting approval of such rules or programs: approval of a state rule that adjusts a section 112 rule, approval of a State rule that substitutes for a section 112 rule, and approval of State program which substitutes for some or all section 112 emission standards or requirements.

Under the first of these three options, a State rule could be approved that is structurally very similar to, but is at least as stringent as, a Federal rule. The State rule must have undergone State notice and public comment before submission for Federal approval. Under this option, each adjustment to the Federal rule must be shown to result in emission limits and other requirements that are clearly no less stringent than would have resulted from the otherwise applicable Federal rule. There can be no ambiguity regarding the stringency of any of the proposed adjustments. If EPA finds that the necessary criteria are met, the State rule with adjustments becomes Federally enforceable in lieu of the otherwise applicable section 112 rule.

Under the second option, approval of a State rule that substitutes for a section 112 rule would be necessary when a State rule differs structurally from the

applicable Federal section 112 rule or when a State rule differs in ways that would not be considered unambigously no less stringent. This could be the case when a State submits a rule written independently of a Federal rule or when, for example, a State rule achieves equivalent emission reductions but with a different combination of levels of control and compliance and enforcement measures not allowed otherwise in the Federal rule. Under today's proposed rule, a State must make a detailed demonstration that the State rule results in equal or greater emission reductions (or other measure of stringency where appropriate) for each individual source affected by the Federal section 112 rule. If EPA finds that the demonstration is satisfactory, subpart A would be amended to incorporate the approved State rule. The approved State rule would be Federally enforceable and replace the otherwise applicable Federal rule in the relevant State or local jurisdiction. Approval of a State rule which substitutes for the section 112(r) rule must ensure that the information required for facility registration, submission of the risk management plan, and the auditing strategy are all consistent with requirements in 40 CFR part 68.

The third option is for approval of a State program that substitutes for some or all section 12 emission standards. Under this option, a State program may be approved only for implementation and enforcement in place of implementation and enforcement of specific standards and requirements established under sections 112(d), (f), or (h). For approval to implement and enforce the State program in place of otherwise applicable Federal section 112 emission standards, a State must make a number of legally-binding commitments. First, the State must commit to regulating every source that would have been regulated by the Federal section 112 emission standards for which the State program is intended to substitute. Second, the State must provide assurance that the level of control and compliance and enforcement measures in each 40 CFR part 70 permit for these sources are at least as stringent as those that would have resulted from the otherwise applicable Federal emission standards. Finally, the State must commit to expressing the 40 CFR part 70 operating permit conditions in the form of the otherwise applicable Federal standard. This means that the State must commit to translating its standards from the State form to the Federal form so that permitted operating conditions are expressed in the same units of measure and include the same or otherwise Federally recognized monitoring and test procedures for that as the Federal rule. This means that monitoring and testing methods which have been approved by EPA for the pollutant and source category can be used. If approval of the State program is granted, EPA would then promulgate a rule amending subpart A to incorporate the State program.

A State may use any one or any combination of these options in its request for approval of State rules or programs. (A State need not employ any of these options if it is accepting delegation of all Federal section 112 rules without changes.) For example, a State might submit a request under option three, program approval, for authority to regulate all source categories except for dry cleaners. The State's dry cleaner rules may be very different from the Federal rules so these rules will be submitted under option 2, rule substitution. The State might submit its air toxics new source program for approval in lieu of the modifications rule under option 2. The State wants to withhold credit for plant shutdowns under the early reduction program, so this might be submitted under option 1. The State might implement the permit hammer provisions promulgated under authority of section 112(j) without changes, therefore, no submission under this subpart would be necessary. (Note that this description is purely for illustrative purposes; EPA is not making any statement about whether any specific changes would be approved.) The three options for approval are summarized in the following table.

TABLE 1.—SIMILARITIES AND DIFFERENCES BETWEEN PROPOSED APPROVAL OPTIONS

	Type of approval		
	§63.92	§63.93	§63.94
	Section 112 rule adjustment	Section 112 rule substitution	Section 112 emission standards substitution
Approval of a State rule or State program?	Rule	Rule	Program.
Approval in lieu of emission standards?	Yes	Yes	Yes.
Approval in lieu of rules other than emission standards?	Yes	Yes	No.
Approval in lieu of future section 112 emission standards?	No	No	Yes.
Federal rulemaking required as part of approval?	No	Yes	Yes.
40 CFR part 70 program approval requirement for section 112(l) approval?	No	No	Yes.
Permit must be expressed in the form of the section 112 rule?	Yes	No	Yes.
Level of control and compliance measures considered separately in determining stringency?	Yes	No	Yes.

In receiving approval of a State rule or program, a State has the responsibility to respond in a timely fashion to EPA requests for information needed to review the adequacy of State implementation and enforcement of an approved rule or program. The EPA will develop guidance for the regular review and intermittent audits of approved State rules and programs.

After approval has been granted, if EPA finds that a rule or program is being implemented or enforced in an inadequate manner, EPA would have the authority to withdraw approval of that rule or program. Before approval is withdrawn, however, the State would have the opportunity to correct the deficiencies identified in EPA's review or audit. The EPA would inform the State of changes that need to be made and if the State does not take adequate

action to correct the deficiencies and a public hearing would be held and written testimony accepted. The State would then be given 90 days to correct the situation. Only after this process has taken place, if EPA is still not satisfied, would EPA withdraw approval of the rule, the program or part of the rule or program. Upon withdrawal, States would be required to open 40 CFR part 70 operating permits according to the provisions § 70.7(g) and rewrite permit conditions to reflect requirements of the applicable Federal section 112 rule.

Under §§ 63.96(b)(4)(v) and 63.96(b)(6)(ii), which address withdrawal of approval of State programs either by EPA or voluntarily by the State, the proposal states that EPA has authority to enforce the applicable section 112 requirement. This authority is a restatement of section 112(l)(7), which requires that nothing shall prohibit EPA from enforcing any applicable emissions standard or requirement under section 112. EPA always has concurrent authority to enforce the applicable section 112 standard, which may be either an approved State standard or a Federal standard, depending upon whether the State standard has been federally approved pursuant to the procedures set forth in this proposal.

The federally promulgated section 112 standard is the applicable and federally enforceable standard unless and until a State section 112 standard is approved by EPA pursuant to the procedures set forth in this proposal. Once approved, the State standard becomes the applicable standard which EPA has authority to enforce, and the federally promulgated standard is no longer applicable or enforceable. Upon withdrawal of approval of a State standard, the federally promulgated standard for which the State standard substitutes once again becomes the applicable standard. In the withdrawal notice, EPA will put sources on a reasonable and expeditious schedule for coming into compliance with the federally promulgated standard. EPA solicits comment on its approach to approval and withdrawal of approval of State standards that result in substitution of State standards for the otherwise applicable Federal standard or resubstitution of the Federal standard upon withdrawal or approval of a State standard.

III. Rationale

A. Eligibility and Scope of Approval

Subsection 112(l) of the CAA allows States to submit programs to EPA for approval for reducing emissions of HAP's from stationary sources. Today's proposed rule would use the definition of "State" given in proposed subpart A: "all non-Federal authorities, including local agencies, interstate associations and State-wide programs that have been delegated authority to implement (1) the provisions of this part or (2) the permit program established under 40 CFR part 70 of this chapter or both (1) and (2)." This definition would include Indian Tribes that have such authorities. Local agencies would be required, as per subsection 112(l)(8), to consult with the respective State before submitting a rule or program for approval. State agencies would have an option of submitting rules or programs for approval on behalf of a local agency in their jurisdiction after consultation with the local agency.

While generally enforceable outside of a permit, much of the implementation and enforcement of section 112 rules often will take place through 40 CFR part 70 permits. In addition, a significant oversight mechanism for judging the adequacy of implementation and enforcement of an approved rule or program will be through review, enforcement and audit of 40 CFR part 70 programs. Therefore, States that wish to seek approval of State rules and programs in lieu of Federal rules should first seek approval of a 40 CFR part 70 program. Exceptions may be allowed in instances where a State seeks approval to implement certain rules in place of Federal rules before receiving 40 CFR part 70 program approval. EPA anticipates that the most likely exception would be for approval of rules under § 63.92 or § 63.93 to adjust or substitute for Federal section 112 emission standards that are promulgated before States have reasonable opportunity to obtain approval of 40 CFR part 70 operating permit programs. No exceptions are anticipated under § 63.94 since EPA approval and subsequent permit reviews are necessarily conditional on the existence of an approved 40 CFR part 70 operating permit program. Comment is solicited on the need for an approved 40 CFR part 70 operating permit program as a precondition for approval under any option in today's proposed rule.

Certain section 112 authorities would not be delegated to States under these proposed regulations. These include any authority that might allow a State to regulate air toxics sources in any manner which is less stringent that the Federal program. For example, a State could not regulate fewer pollutants, postpone regulatory compliance dates, or decrease reporting requirements. In addition, under today's proposed rule, a State could not receive authority to regulate pollutants not on the list of HAP's established under section 112(b) or the list of substances established under section 112(r). EPA is seeking comment on whether authority to regulate additional pollutants can or should be delegated and whether such delegation would be lawful.

Today's proposed rule specifies criteria for delegation of certain of EPA's authorities and responsibilities under section 112 and provides that States seeking approval of programs under section 112(l) must meet the approval criteria of section 112(l)(5) as these criteria are specified in § 63.91 and in §§ 63.92 through 63.95 of today's proposed rule. Section 112(l)(5) requires that a State program contain adequate authorities to assure compliance by all sources within the State with each standard, regulation or requirement established by the Administrator under section 112; adequate authority and resources to implement the program; an expeditious schedule for implementation and compliance; be in compliance with the guidance in today's proposed rule upon its promulgation; and otherwise be likely to satisfy, in whole or in part, the objectives of the Clean Air Act. These section 112(l)(5) criteria are contained in the approval criteria of today's proposed rule.

In addition, today's proposed rule provides that, if a State seeks delegation of authority to implement and enforce section 112 standards or requirements exactly as promulgated by EPA, approval of the State's operating permit program under part 70 will suffice to satisfy the approval criteria of section 112(l)(5). This provision does not change the requirements for approval under part 70. In order to obtain and retain part 70 approval, a State must demonstrate adequate authority and resources to implement and enforces Federally promulgated section 112 applicable requirements and its ability to obtain adequate authority to implement and enforce future Federal section 112 applicable requirements, whether or not it also seeks approval under section 112(l) for State standards that are different from Federally promulgated standards.

EPA believes that satisfying the approval criteria of section 112(l)(5) by satisfying the approval of part 70 as specified in § 70.4 provides sufficient safeguards for EPA to delegate authority to States to implement and enforce section 112 standards and requirements that are unchanged. A State's request for approval of its operating permit program under part 70 would be an implicit request under section 112(l) for delegation of unchanged federally

promulgated section 112 standards and requirements. Nevertheless, such a request under part 70 would only apply to sources covered by the State's part 70 program. Delegation authority for sources not covered by the State's part 70 program would require a request for approval under section 112(l). For example, a State might seek approval for a State standard that applied to a part 70 deferred or exempted source, such as nonmajor sources exempted under § 70.3(b)(2), or for section 112(r) requirements that are not implemented through the part 70 permit (for example, requirements applicable to section 112(r) sources not subject to part 70). Such approvals would require a request for approval under section 112(l).

Therefore, under today's proposed rule, a State that requests and receives approval for its part 70 operating permit program would not need to submit a request for approval under section 112(l) in order to implement and enforce section 112 standards and requirements unchanged from the Federally applicable requirements under part 70, with the exception of those types of situations discussed above. Following the approval of the part 70 program, EPA will exercise its responsibility to ensure that the requirements of section 112(l)(5) continue to be met by the State. This oversight function may be combined with EPA's oversight functions under part 70.

EPA considers its delegation authority to be broad enough to allow this delegation without a formal request for approval under section 112(l) by States seeking delegation of unchanged section 112 standards or requirements, as long as the part 70 operating permit programs of those States have been approved. Authority to delegate section 112 requirements is explicitly specified in section 112(l)(1), which allows a State to submit a program that provides for partial or complete delegation of the Administrator's responsibilities to implement and enforce emissions standards and prevention requirements. This is a clear indication of Congress's intent that EPA may delegate section 112 standards and requirements to States with approved section 112(l) programs. Since EPA considers the criteria for approval of part 70 operating permit programs to be at least as comprehensive as the criteria for approval of section 112(l) programs, and since the State is obligated under part 70 to implement and enforce through permits the applicable requirements of section 112, EPA believes that it may delegate section 112 standards and requirements to States with approved part 70 operating programs without a formal request under section 112(l). EPA solicits comment on its approach to delegation of authority for implementation and enforcement of section 112 applicable requirements unchanged from Federally promulgated requirements.

In addition, EPA believes the Act may grant broader authority for delegation of section 112 standards and requirements than that specified in section 112(l). Congress indicated its intent that EPA may delegate section 112 authority to the States in frequent section 112 references to authorities and responsibilities that may be assumed by either EPA or the State, as well as to coordination between EPA and the States in developing areawide strategies to reduce risks from air toxics emissions. Such references are found, for instance, in sections 112(g), 112(i), and 112(k). Moreover, in addition to specific references in section 112 to the Administrator's authorities and responsibilities, Congress provided the Administrator with general authority in section 301(a) to prescribe such regulations as are necessary to carry out the Administrator's functions under the Clean Air Act, and this authority provides additional support for delegation through regulations.

Therefore, EPA is considering whether the Act provides it with a general delegation and authority that would allow delegation of section 112 standards and requirements independently of the submittal of a program under section 112(l) or part 70. Among other things, such a general authority would allow delegation of standards prior to approval of a part 70 program without the need to follow all subpart E procedures. It may also allow delegation of other of its authorities and responsibilities, such as addition of pollutants to the list of pollutants under section 112(b) or implementation and enforcement of any other section 112 authorities and responsibilities. EPA solicits comment on this view of its delegating authority and whether approval of either a State's operating permit program under part 70 or a State's request under today's proposed rule is a necessary precondition for delegation of section 112 authorities and responsibilities.

Once approved, a State rule or program would be Federally enforceable in lieu of an otherwise applicable section 112 rule. Part 70 permits would contain the requirements of the approved State rule or program rather than the otherwise applicable Federal rule. Such permit requirements would be enforceable by EPA, the State, and citizens acting pursuant to section 304 of the Act to the same extent as specified in part 70.

Approval of a State rule or program would not supersede the requirements of any Federal rules other than those authorities specifically delegated to a State as part of the subpart E approval. Thus, for example, when a State has been approved to implement a State rule or program in lieu of a particular Federal emissions standard established under section 112, other Federal requirements or regulations established pursuant to Title I and other requirements of the CAA still apply.

A 40 CFR part 70 permit issued after an approval under subpart E must note that if, for any reason, approval is withdrawn, then the permit would have to be revised according to the provisions of § 70.7. The current permitted operating conditions would be replaced by the otherwise applicable Federal section 112 rule.

When a State amends, repeals or revises an approved rule, the revisions must either be submitted to EPA for approval or the State Attorney General must provide a written finding that the revised authorities are adequate to assure compliance by all sources with all applicable requirements. If the changed rule is disapproved, EPA may initiate procedures to withdraw approval of the State's program or relevant portions of the State's program. The revised State rule is not Federally enforceable unless and until approved by EPA. Sources must comply with the previously approved rule until the new rule is approved or approval of the previously approved rule is withdrawn.

B. Criteria Common to All Approval Options

The criteria for approval described in today's proposed rule are based on the requirements of subsection 112(l)(5). A State requesting approval must demonstrate adequate legal authority to implement and enforce the approved rule or program. This demonstration would include a letter from the State Attorney General certifying the existence of adequate authority and all State statutes, regulations or other requirements granting such authority. The State also must demonstrate adequate authority to assure compliance by all sources in the State with each applicable requirement established by EPA under section 112 and the State must demonstrate adequate resources to implement and enforce the approved rule or program. Finally, the State must submit a schedule, plan and procedures providing for adequate and expeditious implementation, compliance and

enforcement of the approved rule or program. Such a showing would include commitments to adhere to EPA's Revised Compliance Monitoring Strategy (March 29, 1991) and the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators guidance (February 7, 1992). The approved rule or program must also be likely to satisfy in whole or in part the objectives of the Act.

Section 63.91 describes criteria common to all approval options. §§ 63.92 through 63.94 describe specific criteria for each of the three approval options. Any rule or program approved under subpart E must meet all the common criteria and all of the criteria of one of the three sets of specific criteria. § 63.95 describes additional criteria that must be met for approval of a State's ARP program, under either § 63.92 or § 63.93. Specific criteria for the three approval options are described in separate sections below.

Under today's proposed rule making, upon receipt of a request for approval, EPA would review the State's application for completeness and notify the State within 30 days whether additional information needs to be included. Within 180 days, EPA is required under section 112(l)(5) to approve or disapprove the request. If the request is disapproved, EPA would inform the State of the revisions that are necessary to obtain approval.

C. Approval of a State Rule That Adjusts a Section 112 Rule

Section 63.92 of today's proposed rule describes criteria that would need to be met for EPA approval of a State rule that makes specified adjustments to a Federal section 112 rule. This approval option is intended to be exercised by a State seeking approval of a rule that is substantially similar in form to a Federal section 112 rule, but that incorporates specified changes, or adjustments, that make the State rule unequivocally no less stringent than the Federal rule. This will normally be the case only when a State rule has been developed using an existing Federal rule or proposal as a basis. It is not EPA's intent that this option would be invoked for approval of State rules where any sort of involved analysis would be required in order for EPA to determine that the adjusted State rule was no less stringent than the Federal section 112 rule.

The EPA anticipates that this option could be used to obtain approval of State rules that adjusted Federal emission or other standards established under sections 112 (d), (f) or (h) (including any general provisions promulgated in part 63); or to obtain approval of adjusted Federal rules promulgated under: section 112(g), regarding modifications; section 112(j), regarding case-by-case emission limits by permit; section 112(i)(5), regarding early reduction limits; or section 112(r), regarding accidental release prevention (ARP) programs; or other section 112 requirements. The EPA is soliciting comments on the applicability of this approval option for the delegation of other section 112 authorities expressly retained by the Administrator under § 63.90(c) in today's proposed rule and on the appropriateness of the conditions on such delegation.

Approval under § 63.92 (rule adjustment) is somewhat similar to approval under § 63.93 (rule substitutions). Procedurally, under both approval options, a State would generally be seeking approval of a single State rule that could be implemented and enforced in place of an otherwise applicable Federal section 112 rule. Under both approval options, the State would have to obtain EPA's approval under section 112(1) before the respective State rule would be Federally enforceable. Moreover, the net effect of approval under either option is basically the same: an approved State rule would be implemented and enforced in place of the otherwise applicable Federal rule. The main difference is that EPA anticipates that approval of an adjusted Federal section 112 rule under § 63.92 would be less complex and more straightforward than under § 63.93 because of the limited types of adjustments that can be made under approval § 63.92.

In addition, both the rule substitution option in § 63.93 and rule adjustment option in § 63.92 differ from the option allowed under § 63.94 of today's proposed rule in that both require a demonstration of rule stringency as part of the approval submission to EPA, whereas the latter option involves EPA approval of a State commitment to make this stringency demonstration later through the 40 CFR part 70 operating permit process.

Because approval under § 63.92 involves an adjustment to an existing Federal section 112 rule, that Federal rule must be promulgated before approval of an adjusted State rule can be given. This is necessary because EPA's determination of the stringency of the adjusted Federal section 112 rule would necessarily use the Federal rule itself as a starting point for comparison. At a minimum, the enforcement and compliance provisions of any proposed State rules must be sufficient to ensure practical enforceability of the State standard.

Any request for approval under this option must meet all of the criteria of § 63.92 as well as the common approval criteria in § 63.91 before approval may be granted. Any request for approval of an adjusted ARP rule must also meet the criteria of § 63.95 before being approved. As part of its submission, the State must provide EPA with all of the following:

1. A demonstration that the public within the State has had notice and opportunity to submit written comment on the State rule. Opportunity for public comment afforded by the State must be sufficient to meet minimum Federal requirements for notice and opportunity for public comment as set forth in the Federal Administrative Procedure Act, 5 U.S.C. section 553(b), (c). Under today's proposed rule EPA considers it sufficient to limit the requirement for notice and opportunity for public comment to within the State, but EPA is soliciting comments on the appropriateness of alternative notice and public comment requirements including whether notice to adjacent States should be required. Today's rule would not restrict receipt of or response to any comments received from members of the public outside the State.

2. A demonstration showing that each State adjustment to the Federal rule individually meets the following criteria.

(a) Each adjustment is unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability. That is, all emission points within all affected sources subject to the Federal section 112 rule must also be subject to the State rule for which approval is sought.

(b) Each adjustment is unequivocally no less stringent than the otherwise applicable Federal rule with respect to the level of control for all affected emission points within all affected sources. Level of control means the degree to which a standard requires a source to limit emissions or to employ design, equipment, work practice, operational accident prevention or other requirements or techniques (including a prohibition of emissions) for each HAP listed pursuant to section 112(b) or substance regulated under 40 CFR part 68.

(c) Each adjustment is unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for every affected source. Compliance and enforcement measures means requirements within a rule or program relating to enforcement, including

monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling, maintenance and repair of process or air pollution control equipment, and other measures, as well as auditing, source registration and submission of risk management plans as required in the accidental release prevention program.

(d) Each adjustment assures compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(e) Each adjustment qualifies under one of the listed adjustments.

The following State adjustments to section 112 Federal rules are approvable under § 63.92 of today's proposed rule, unless specifically disallowed in the corresponding Federal section 112 rule for which adjustment is being sought:

(1) Lowering an emission rate requirement;

(2) Lowering a de minimis level established under a section 112 rule;

(3) Shortening a minimum averaging time;

(4) Adding a design, work practice, operational standard or other such requirement;

(5) Increasing a required control efficiency;

(6) Increasing an offset or emission trading discount factor established under a section 112 rule;

(7) Increasing the frequency of required reporting, sampling or monitoring;

(8) Adding to the amount of information required for records or reports;

(9) Decreasing the amount of time to come into compliance;

(10) Limiting or precluding emission trading credit for certain emission reductions;

(11) Increasing a required offset ratio;

(12) Limiting or precluding opportunities for emissions averaging;

(13) any adjustments allowed in a specific section 112 rule.

The EPA is soliciting comments on whether other changes might be determined to be unequivocally no less stringent and therefore should be listed as approvable adjustments, and whether any of the listed changes should not be considered as approvable adjustments. In addition, EPA solicits comments on whether a category of "any other adjustments which are unequivocally no less stringent and which have been approved by the Administrator upon petition by the State," should be added to the list of unequivocally no less stringent adjustments.

In providing flexibility to State and local agencies through this and the other two approval options, EPA may approve a State or local rule or program which embodies policy objectives not identical to those of EPA. EPA is seeking comment as to whether it should consider disapproving programs that pursue different policy objectives, even when such programs are clearly at least as stringent and meet the other criteria of this subpart. In addition, EPA is seeking comment on whether adjustments should be included even though there is the possibility that a State or local program could use this flexibility to pursue policy objectives different from those of EPA. For example, while EPA may have included a trading provision in a section 112 rule, a corresponding State rule might seek to limit trading options to more strictly control emissions of hazardous air pollutants in that State. Thus, program adjustments involving, for example, the increase of an offset or emission trading discount, the increase of a required offset ratio, limits on emission trading credit for certain emission reductions, or limits on opportunities for emissions averaging would involve changes that are at least as stringent as those required by EPA but would be different from the Agency's policy objectives.

Before submitting a request for approval under this option, the public within the respective State must have been given the opportunity to comment on the State rule. If EPA approves a State rule under this option, notice of approval will be published in the **Federal Register** and the approved State rule will be incorporated, either directly or by reference, at EPA's discretion, under subpart A of part 63. In the case of a rule approved under § 63.95, the approved rule will be incorporated under part 68.

The EPA believes additional rulemaking as part of the approval process under this option is not necessary since any State request under this option will only be approved by EPA if adjustments which are included in this section 112(l) rulemaking are incorporated; adjustments that the public has opportunity to comment on in today's notice. The EPA solicits comment on this. The EPA also is soliciting comments on the alternative of incorporating the approved rule, either directly or by reference, into the subpart containing the otherwise applicable Federal rule or under subpart E rather than under subpart A.

After approval, authority would thereby be delegated to the State to implement and enforce the approved rule in place of the otherwise applicable Federal rule. The approved rule is Federally enforceable. Subsequently, only the operating conditions resulting from the approved State rule would appear in the 40 CFR part 70 permit of a source subject to the rule's requirements. These operating conditions would be Federally enforceable.

If EPA finds that any of the requirements of § 63.92 or § 63.91 have not been met, including the requirements of § 63.95 in the case of ARP rules, EPA would disapprove the request for approval according to the criteria under § 63.91(a)(3) of today's proposed rule.

D. Approval of a State Rule That Substitutes for a Section 112 Rule

Section 63.93 of today's proposed rule describes criteria that must be met for EPA to approve a State rule that differs from the otherwise applicable Federal rule in ways that do not match the approvable adjustments listed in § 63.92. This might be the case when a State submits a rule that differs significantly in form or that may be less stringent in certain aspects of level of control or compliance measures but that is no less stringent in terms of emissions reduction. Because such a rule differs significantly from the otherwise applicable Federal section 112 rule either in form or in terms of differing from certain adjustments considered approvable under § 63.92, this type of rule, once approved, would be considered to substitute for and not merely to adjust the Federal rule. Comment is solicited on whether different nomenclature should be used to distinguish between an "adjustment" and a "substitution." Procedures for approval under this option are substantially similar to those of § 63.92.

The EPA anticipates that this rule substitution option could be used to obtain approval of State rules that would substitute for Federal emission or other standards established under sections 112(d), (f) or (h) (including any general provisions promulgated in part 63); or to obtain approval of State rules to substitute for Federal rules promulgated under: section 112(g), regarding modifications; section 112(j), regarding case-by-case emission limits by permit; section 112(i)(5), regarding early reduction limits; section 112(r), regarding ARP programs; or other section 112 requirements. Comment is solicited on the applicability of this approval option for the delegation of other section 112 authorities expressly retained by the Administrator under § 63.90(c) in today's proposed rule and on the appropriateness of conditions on such delegation.

Approval under § 63.93 (rule substitution) is somewhat similar to approval under § 63.92 (rule adjustment). Procedurally, under both approval options, a State would generally be seeking approval of a single State rule which could be implemented and enforced in place of an otherwise applicable Federal section 112 rule. Under both approval options, the approval process would have to be completed before the respective State rule could be Federally enforceable. Moreover, the net effect of approval under either option is basically the same: an approved State rule would be implemented and enforced in place of the otherwise applicable Federal rule. The main difference is that EPA anticipates that approval of a State rule substituting for a Federal section 112 rule under § 63.93 would require a more demanding demonstration of stringency than under § 63.92. Nevertheless both the rule substitution option in § 63.93 and rule adjustment option in § 63.62 resemble each other more than they resemble the option allowed under § 63.94 of today's proposed rule in that the first two options require State demonstrations of rule stringency as part of the approval submission to EPA, whereas the latter option approves a State commitment to make this stringency demonstration at a later time as part of the 40 CFR part 70 operating permit process.

Because approval under § 63.93 involves a substitution of an existing Federal section 112 rule by a State rule, that Federal rule must be promulgated before approval of a substitute State rule can be given. This is necessary because EPA's determination that the State rule is no less stringent than the Federal section 112 rule it substitutes for would necessarily use the Federal rule itself as a starting point for comparison.

Any request for approval under this option must meet all of the criteria of § 63.93 as well as the basic approval criteria in § 63.91 before it can be approved. Any request for approval of a substitute accident release prevention (ARP) rule must also meet the criteria of § 63.95 before approval. As part of its submission, the State must provide EPA with a demonstration that the State rule contains:

(1) Applicability criteria that are no less stringent than those in the relevant Federal rule;

(2) Levels of control and compliance and enforcement measures that, when considered together, result in emission reductions from each affected source that are no less stringent than those that would result from the otherwise applicable Federal rule;

(3) A compliance timetable that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule.

Under this approval option, these criteria are the basis for EPA's determination that authority can be delegated to a State for implementing and enforcing a State rule in lieu of a Federal rule.

Applicability—An approved State rule must apply to every source to which the otherwise applicable Federal rule applies. A State rule will not be approved under this option if it compromises Federal rule applicability criteria—even if the State believes that any such compromise would be offset by a more stringent level of control or compliance measures on sources affected by the State rule but not by the Federal rule. Hence, if an otherwise applicable Federal rule applies to a source, the State rule operating in lieu of that Federal rule under this option must also apply to that same source. However, if a source is subject to Federal rules but the State is not requesting approval under this option to substitute for those Federal rules, then State rules would not apply under this option. For those sources, the Federal standards are the applicable requirements.

Demonstration of no less stringent levels of control and compliance measures, when considered together—this criterion significantly differentiates this approval option from the other two options in today's proposed rule. The EPA recognizes that there are more elements to rules that affect emission limits or reductions than just a level of control. Equally important are the compliance measures that are required for testing, monitoring, recordkeeping, reporting, operation and maintenance, and compliance certification.

Under this option in today's proposed rule, EPA will only approve a State rule if it believes that the emission reductions gained by the State rule are at least as great as the emission reductions that would have been gained by the Federal rule for each affected source. EPA may approve a State rule that is less stringent in some aspects regarding the level of control if the level of control is offset by a more stringent set of compliance measures that when taken together with the level of control result in as great or greater emission reductions. For example, if a State rule had a slightly reduced level of control efficiency required but a much shorter averaging time, EPA might, in a particular case, expect that the State rule would achieve greater emission reductions and thereby approve the State rule. Or, a State rule might have less frequent reporting requirements but require a much greater level of control. Again, EPA might, in a particular case, find that the resulting emission reductions expected of the State rule are greater than those of the Federal rule.

EPA may include guidance on approval under this option either as part of promulgated Federal section 112 rules or in individual delegation manuals published with other promulgated section 112 rules. The EPA solicits comments on the usefulness and possible content of such guidance. The EPA intends to give latitude to the States in making such demonstrations. However, several guidelines are offered that limit the latitude that would be extended to States in their approval submissions:

(1) Except as expressly allowed in the otherwise applicable Federal emission standard, any forms of averaging across facilities, source categories, or geographical areas, or any forms of trading across pollutants, will be disallowed for a demonstration of stringency under § 63.93. Any State rule must be demonstrated to be no less stringent than an otherwise applicable Federal rule for any affected source subject to the Federal rule rather than, on average, across sources. This does not mean that a State's submittal must necessarily include a separate demonstration of stringency for each individual affected source within a State. Rather, a State must demonstrate that its rule could reasonably be expected to be no less stringent for any affected source within the State, reflecting knowledge of the number, sizes and operating characteristics of that kind of source within the State subject to the relevant State rule. A worst case analysis may reasonably suffice in some such demonstrations. EPA solicits comment on this approach and on ways to demonstrate stringency under this option.

(2) Because of the complexities involved in determining whether alternative compliance measures are no less stringent, EPA intends to require detailed demonstrations in State submissions if the submissions propose monitoring, recordkeeping or reporting requirements that are substantially different from those in the otherwise applicable Federal rules.

In general, when considering approval of a State's rule under this option, EPA will look first to any equivalency provisions or allowance for alternative emission limits and compliance measures established in the otherwise applicable Federal rule. Beyond this,

approval will be determined on a case-by-case basis considering the nature of the particular State rule and the completeness of the supporting data accompanying the State's approval submittal.

The EPA solicits comment on whether to prohibit certain changes from approval as Federally enforceable, even if they result in requirements that are no less stringent. For example, a State might seek approval of a State rule that altered a section 112 emission standard by regulating an additional air pollutant not listed under section 112(b).

EPA is also soliciting comment on the type of demonstration of stringency that would be required for approval of rules substituting for Federal rules other than emission standards. For example, the Federal rule to implement section 112(g) will be far reaching in its scope and it may be a significant burden to show, a priori, that a State substitution for this rule, involving case-by-case determinations, would result in equal or greater emission reduction for every affected source.

Under this proposed rulemaking, within 45 days after receipt of a complete request for approval under this section, EPA would seek public comment on the State request for approval. Comments must be submitted concurrently to the State and to EPA. If, after review of all public comments and written State responses to comments provided to EPA within 30 days of the closing of the comment period, EPA finds that the criteria of this section and the criteria of § 63.91 are met, as well as applicable criteria in § 63.95 for accident release prevention (ARP) rules, the State rule would be approved by EPA and the approved rule would be published in the **Federal Register** and incorporated, either directly or by reference at EPA's discretion, under subpart A of part 63. EPA solicits comment on the alternatives of incorporating the approved rule, either directly or by reference into: (1) The subpart containing the otherwise applicable Federal rule; or (2) into subpart E of part 63.

After approval, authority would thereby be delegated to the State to implement and enforce the approved rule in place of the otherwise applicable Federal rule. The approved rule is Federally enforceable. Subsequently, only the operating conditions and other requirements resulting from the approved State rule would appear in the 40 CFR part 70 permit of a source subject to the rule's requirements. These requirements would be Federally enforceable.

If under this option, EPA finds that any of the requirements of § 63.93 or § 63.91 have not been met, EPA would disapprove the request for approval according to the criteria under § 63.91(a)(3) of today's proposed rule.

E. Approval of a State Program That Substitutes for Section 112 Emission Standards

Section 63.94 of this proposed rule describes criteria necessary for EPA approval of a State program in which a State commits to incorporate conditions in 40 CFR part 70 operating permits that are no less stringent than otherwise applicable Federal section 112 emission standards. A State program, in the context of today's proposed rule, is not necessarily a single rule but could also be a collection of State statutes, regulations, or other requirements that limits or will limit the emissions of HAP's from affected sources. This option is intended only for approval of State programs that would be implemented and enforced in place of otherwise applicable Federal section 112 emission standards promulgated pursuant to sections 112 (d), (f), and (h) of the CAA. Under this section, the EPA does not intend to approve State programs that would be implemented and enforced in place of Federal section 112 rules other than section 112 (d), (f), or (h) rules or to provide for the delegation of Federal authorities retained by the Administrator under § 63.90(c). For example, authorities relating to other provisions within section 112 (dealing with modifications, early reductions, case-by-case emission limitations and accidental releases) are more appropriately delegated under the rule-based options under §§ 63.92 and 63.93 in today's proposed rule. Comment is solicited on applying this approval option to other than section 112 emission standards.

Under section 112 of the CAA, EPA is obligated to establish emission and other standards under subsections 112 (d), (f) or (h) for categories of sources listed pursuant to subsection 112(c)(1). The EPA has published an initial list of 174 categories of major and area sources (57 *FR* 31576 (1992)) and has proposed a schedule for promulgating standards for each of these listed categories (57 *FR* 44147 (1992)). Section 112 seeks to impose technology-based standards on source categories, to be followed by further standards if certain levels of residual risk remain after imposition of the technology-based standards. Section 112 requires establishment of standards that apply to categories of sources, i.e., groups of sources having some common features suggesting that they should be regulated in the same way and on the same schedule.

In the last decade, many States have established programs, with EPA's support, for the control of air toxics emissions from many of the same source categories that have been listed under section 112(c)(1), and for many of the same HAP's that EPA will regulate under section 112. Because many State programs preceded EPA's new emission standards program under section 112 of the CAA, some are structurally different than section 112 standard requirements in important ways. For example, some States have enacted air toxics programs that do not categorize sources as EPA does for standard-setting purposes or that do not apply technology-based standards to specific categories of sources. Instead, these States may evaluate the overall impact of an entire plant site on the surrounding environs in terms of health- or risk-based benchmarks, as a first step, and then consider the need for controls on some or all emission points if that facility's air toxics emissions cause exceedances of the benchmarks. As a particular example, some States have established acceptable ambient levels of HAP's as health benchmarks for evaluating the fenceline impact of each facility's emissions. In this type of program, the particular control requirements imposed on any given facility by the State, if any, may be quite situational, may depend on various facility-specific parameters, and may be more or less stringent than the level of control that would result from any Federal standards under section 112 applicable to that same facility.

Because some States' air toxics programs result in facility-specific control requirements, they are inherently "case-by-case" in terms of their impact on any particular source within a facility. This results in another important structural difference between some States' programs and the new Federal emissions standard program under section 112. Unlike case-by-case programs, the Federal program would establish standards for entire categories of sources, resulting in a similar level of control for all subject sources within a category or subcategory. In contrast, States' programs may result in one level of control for one source within a certain category and another level of control for a similar source in the same category.

States with structurally different programs from the Federal program are concerned the EPA's emission standards program might potentially disrupt the continued implementation of their programs if they could not operate their

own programs in lieu of the Federal program. The primary reason for their concern is that the simultaneous implementation of the States' programs and the new Federal emissions standards under section 112 could result in dual regulatory conditions. As discussed earlier in this notice, States and industries fear that dual regulatory conditions would be burdensome because they are more time consuming and costly, and they potentially could result in inconsistent or incompatible conditions relating to levels of control or monitoring, recordkeeping and reporting. Moreover, because of structural differences, States are concerned that they could not reasonably demonstrate in advance of case-by-case application, using either of the rule-based approval options under § 63.92 or § 63.93, that their programs would result in requirements that are no less stringent for all potentially affected sources than those that would result from otherwise applicable Federal standards.

The EPA agrees that States with air toxics programs differing structurally from the Federal program should not be unnecessarily deterred from implementing and enforcing these programs in place of Federal emission standards if these programs result in emission reductions and attendant permit conditions that are no less stringent than would result from the otherwise applicable Federal standards. The EPA is thus offering an option under § 63.94 of today's proposed rule under which authority could be delegated to States to implement and enforce their air toxics programs as Federally enforceable in lieu of section 112 Federal emission standards through their part 70 permits. A State could implement and enforce its program under this option in lieu of none, any, or all Federal standards established or to be established under sections 112(b), (f) or (h), at the State's discretion and upon EPA approval.

The EPA is proposing that a State's submission for approval under § 63.94 could be "open-ended" in that it would not have to identify specific State standards that its program would implement and enforce in place of particular Federal section 112 emission standards. However, because of the open-ended nature of this approval option, a State would have to specifically request, in its approval submission, the Federal authorities for which it was seeking delegation under § 63.94. In other words, a State must specify the section 112 standards that would be covered under this option. It would be assumed that all other scheduled Federal emission standards not cited would be delegated without changes or through an approval under §§ 63.92 or 63.93. Delineation is necessary in order for EPA, the public and the regulated community to ascertain readily what emission standards apply to each affected source. Comment is solicited on EPA's intent to approve State programs that are open-ended in the sense of applying to all existing and future Federal section 112 emission standards, except as excluded in a State's submission for approval.

This third approval option requires a State to make a legally binding commitment that it will express all relevant emission or other limitations or requirements, resulting from the State's program, in 40 CFR part 70 permits for all affected sources in the form of the otherwise applicable Federal standard. Any such permit conditions would have to reflect emission or other limitations that would be no less stringent than those that would result from the otherwise applicable Federal standard.

Two important aspects of this option differ from the rule-based approval options under §§ 63.92 and 63.93. First, EPA is proposing to approve State submissions under § 63.94 that do not contain any demonstration of stringency as part of the up-front approval submissions. In contrast, the two rule-based approval options under § 63.92 and § 63.93 require a demonstration of stringency as part of the State submission for approval, before any CFR part 70 permits are written or revised to reflect the approved rules under § 63.94 demonstration of no less stringency is made at the permit issuance or revision stage. A second difference between this option and the two rule-based approval options under §§ 63.92 and 63.93 is that this option requires the 40 CFR part 70 permit conditions resulting from the State program to be expressed in the form of the otherwise applicable Federal emission standard. This requirement would allow EPA to review each permit and quickly and efficiently determine whether the permit conditions resulting from the State program are no less stringent than those that would result from the otherwise applicable Federal emission standard. The EPA believes that States should commit to expressing the requirements resulting from their programs in the form of the Federal standard: (1) Because States have the knowledge and experts to do so, (2) because the process of expressing the State requirements in the form of the Federal standard would be a necessary part of the State's internal comparison that would assure that the State requirements were at least as stringent as the Federal requirements would have been, and (3) because an adequate detailed EPA analysis of State permit requirements would not always be possible in EPA's 45 day review of permits. States have shown willingness, where possible, to express permit terms and conditions in the form of the otherwise applicable Federal rule.

The EPA is not proposing that the analysis, made by a State to convert its program requirements into the form of the otherwise applicable Federal standard, be incorporated in the 40 CFR part 70 permit. That is, no demonstration will be required in each permit specifying how the State translated the requirements of its program into the form of the otherwise applicable Federal standard. The fact that the State requirements are expressed in the form of the otherwise applicable Federal standard—together with the expression of emission limits or other requirements that are no less stringent than the otherwise applicable Federal standard—is sufficient demonstration by itself. Since the source must comply with no less stringent State standard and that standard is expressed in the form of the Federal standard, there can be no doubt that the source must comply with the no less stringent standard as it appears in the permit and that this assures compliance with the level of control of the Federal Standard. Comment is solicited on the issue of expressing State requirements in the form of a Federal section 112 emission standard in a 40 CFR part 70 operating permit.

Section 63.94 of today's proposed rule identifies several conditions that must be reflected in each affected 40 CFR part 70 operating permit. All such permits must incorporate conditions that:

(1) Reflect applicability criteria that are no less stringent than those in the otherwise applicable Federal standards,

(2) Express levels of control for each emission point that are no less stringent than those contained in the otherwise applicable Federal standards,

(3) Express compliance and enforcement measures for each emission point that are no less stringent than those in the otherwise applicable Federal standards,

(4) Express levels of control and compliance and enforcement measures in the same form, in the same units of measure and adopting the same or otherwise Federally approved monitoring and test procedures (only monitoring and testing methods which have been approved by EPA for the pollutant and source category), as under the otherwise applicable Federal standard, and

(5) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standards.

Additional discussion of these criteria follows because of their importance.

Applicability—the approved State program must apply to all sources and emission points to which the otherwise applicable Federal emission standards apply. In addition, the State's program may apply to additional sources, e.g., sources that have been exempted or deferred from the obligation to obtain a part 70 permit under § 70.3(b) (57 FR 32261 (July 21, 1992)) provided the State extends coverage of the part 70 program to those sources. A State's program would not be approved under this option if the program compromises Federal standard applicability criteria—even if the State contends that any such compromise is offset by more stringent levels of control or compliance measures on certain sources under the State program. Hence, if Federal standards apply to any emission point, the State program operating in lieu of those Federal standards under this option must also apply to each and everyone of those same emission points. A State program need not apply to sources subject to Federal standards for which the State is not taking delegation under this approval option; however, these sources would be subject to Federal standards under the State's 40 CFR part 70 program and the sources' part 70 permits must reflect all applicable Section 112 requirements. A State's program must assure compliance with all Federal section 112 emission standards, regardless of the number and type of approved 112(l) rules or program.

Demonstration of a no less stringent level of control in the form of the Federal standard—Federal emission standards will typically express a level of control in terms of a numerical emission limit or percent reduction that must be attained by an affected source. In such situations, a State with a program approval under this section shall express in the applicable permit a level of control, resulting from its own program, that is in the same form or metric as in the Federal standard (i.e., in terms of the same emission limit, level or reduction, including the same units of measure). (In general, EPA anticipates that part 70 permit conditions reflecting the approved adjustments under § 63.92 would also be expressed in the form of the Federal standard.)

As an example, a certain Federal emission standard may require an emission limit of 5 pounds per hour of a HAP from a particular piece of equipment. In this example, the State would have to express an emission limit resulting from its own program in the same units, i.e., pounds per hour in this case, and the actual limit would have to be 5 pounds per hour or less in order to be no less stringent than the Federal standard. Or, if a Federal standard required a 99 percent reduction in a pollutant from a particular emission point, the State would have to express an emission limit in the respective permit that achieved 99 or greater percent reduction from that emission point to be no less stringent and to express the requirements of its program in the form of the Federal standard. Oppositely, if the Federal emission limit is 5 pounds per hour, a part 70 permit requirement for 99 percent reduction would not be expressed in the form of the Federal standard, even if a State could show that a 99 percent reduction resulted in an emission rate less than 5 pounds per hour. In such a case the State would need to convert the percent reduction to pounds per hour and write the pounds per hour number into the permit.

By way of example as to how a State might translate a risk-based or ambient concentration standard to the form of Federal technology-based standard, a State might proceed as follows: if a State standard were expressed as a concentration not to be exceeded at the source fenceline, the State could determine, perhaps through dispersion modeling, an emission rate that could not be exceeded. This emission rate could then be expressed by an emissions reduction requirement that could be met using a certain type of control equipment. The emission reduction requirement could be directly comparable and translatable to the form of the corresponding requirement under the Federal Standard. Note that if the State's analysis concluded that no control equipment was required because the source did not exceed the risk-based standard, the Federal requirements would nonetheless apply, that is, the source still would be required to install control technology or meet the otherwise applicable conditions required by section 112.

In situations where a Federal standard does not contain a numerical emission limit, and instead specifies some sort of equipment, work practice or operational requirements, it is less clear what it means to express a level of control in the same form as the Federal standard. For example, if a Federal standard requires a leak detection and repair program, there may be no other control option that could be expressed directly in this same form, unless the Federal standard associates a specific numerical limit with this technology that could be used to demonstrate a level of stringency. As another example, if a Federal standard requires the installation and operation of a carbon absorber, it would be impossible to install a refrigerated condenser and express the standard in the same form and, therefore, the Federal requirement would apply. However, it is anticipated that many of the Federal standards to be promulgated under section 112 may contain provisions that would allow specific alternative control measures to be taken that are considered equally effective. For example, a standard may prescribe the use of an acid gas scrubber, catalytic oxidizer, or flare as equally effective for purposes of complying with particular control requirements. The EPA anticipates that this will afford some flexibility to States where a Federal standard is expressed as an equipment, work practice, or operational requirement.

Alternative measures considered equivalent may also be incorporated into delegation manuals that EPA may prepare in conjunction with individual emission standards. If so, 40 CFR part 70 permit conditions that reflect these equivalency provisions would be considered to be expressed in the form of the Federal standard, provided that the concomitant equivalent provisions in the Federal standard regarding compliance measures are also reflected in the permit.

The inclusion of equipment, work practice or operational requirements in a permit—other than those specified to be equivalent in the Federal standard—would not be considered to be an expression of level of control in the same form as the Federal standard. For example, if a Federal standard only specified that a carbon absorber or refrigerated condenser were equivalent when applied on a particular category of source, a permit requirement resulting from a State program, to use a flare, would not be considered to be an expression in the form of the Federal standard. Therefore, depending on the form of the Federal standard, it may not be possible to express some State requirements in the same form, in which case the Federal requirements would remain the applicable requirements. In such a case, the State may choose to incorporate its State requirements in the source's 40 CFR part 70 permit as State-origin only requirements under § 70.6(b)(2). Such State-origin only standards would not be Federally enforceable. Alternatively, the State may be able to obtain approval

of its substitution for an equipment standard under § 63.93. EPA encourages States to work with EPA during development of standards so that State alternatives that are at least as stringent as a Federal standard can be written into the standards.

Demonstration of no less stringent compliance measures in the same form as the Federal standard—compliance measures refer to the requirements of a Federal standard relating, for example to monitoring, test methods and procedures, recordkeeping, reporting and compliance certification. Compliance measures are as important as the level of control in effecting the intended emission reductions in the Federal standard. Hence, under § 63.94 in today's proposal, State's are required to incorporate conditions into a permit resulting from its program that reflect compliance measures that are both no less stringent than and expressed in the form of the otherwise applicable Federal standard.

Compliance measures are not always expressed in terms of numerical limits, as is typically the case for levels of control. Hence, there is less latitude for demonstrating that one set of compliance measures is no less stringent than another. Similarly, there is little latitude for demonstrating that an alternative set of compliance measures is expressed in the same form as another. Thus, unlike the latitude a State has under the rule replacement option in § 63.93 to demonstrate that an alternative level of control is no less stringent than the Federal standard, there is much less latitude under § 63.94 for a State to demonstrate that compliance measures not specified in the Federal standard are, indeed, no less stringent and expressed in the form of the compliance measures in the Federal standard.

Consequently, under the proposed approval option in § 63.94, States will have to incorporate, into permits, compliance measures that largely reflect the compliance measures specified in the otherwise applicable Federal standard. If alternative sets of compliance measures are specified within the Federal standard, or within concomitant delegation manuals, any of the specified alternatives could be incorporated into the respective permit by the State and meet the criterion under this approval option that compliance measures must be no less stringent and expressed in the form of the Federal standard—if the alternative incorporated into the permit by the State corresponded with the respective level of control in the Federal standard. For example, a particular Federal standard may specify one set of compliance measures if a source employs a carbon absorber, but specify another set of compliance measures if the source employs a flare on the same affected source. In such an instance, the set of compliance conditions that corresponded appropriately with the particular control device employed should be incorporated into the permit.

Pursuant to section 112(h)(3), Federal design equipment, work performance, or operational standards established pursuant to section 112(h) must provide for alternative means of emission limitation if an owner or operator demonstrates to EPA's satisfaction a reduction in emissions at least equivalent to the reduction achieved by the Federal standard. Subpart A will describe procedures for the implementation of section 112(h)(3) that allows owners or operators of sources provide to the Administrator alternative means of emission limitations. Once EPA determines that an adequate demonstration had been made, as prescribed under subpart A or in some cases under the respective Federal standard, the approved equipment or procedures could then be written into the permit under this approval option and be considered to be no less stringent than, and expressed in the form of, the otherwise applicable Federal standard. This should afford additional flexibility for States to employ this approval option.

Some States may desire more flexibility than this option provides. States may find that § 63.94 procedures do not allow enough flexibility to address design, equipment and work practice standards or to address alternative compliance measures. EPA is considering allowing a program approval option that gives States an opportunity to declare any State permit conditions Federally enforceable in lieu of the otherwise applicable standards, if the State could demonstrate the resulting operating conditions were at least as stringent as the otherwise applicable Federal requirements. EPA is not proposing this option today because of its concern that such an option would not meet the statutory criterion of section 12(l)(5)(A), which requires that approved State programs must contain authorities that assure compliance by all sources within the State with each applicable standard, regulation; or requirement established by the Administrator under section 112. EPA is also concerned with the level of EPA review that would be required to assure that State implementation of such an approved program at least as stringent as the otherwise applicable Federal requirements. EPA is seeking comment on such an approach.

The EPA is also seeking comment on other approaches that may provide States with sufficient flexibility to operate their programs in lieu of Federal requirements where the State program could be shown to be at least as stringent. Such approaches would need to provide adequate flexibility to the States, satisfy legal requirements to substitute for the otherwise applicable Federal requirements and provide satisfactory practical oversight by EPA.

After a State receives approval of its program under § 63.94, the otherwise applicable Federal standards would not be written into any permit that was issued or revised for sources covered by the State's program and the otherwise applicable Federal standards would not be enforceable unless and until such time that approval of the State program was withdrawn. Under an approved State program, permit conditions incorporating the State program's emission standards would instead be Federally enforceable permit conditions. The State must commit to reopen the permit of each source to which the State's approved program applies if approval is withdrawn under § 63.96. Such reopening must be performed according to the procedures of § 70.7.

EPA may review permits under the authorities of 40 CFR part 70, including as part of program reviews prescribed later in today's notice and proposed rule, to judge whether any delegated authorities under this option should be withdrawn.

F. Accidental Release Prevention (ARP) Program

1. Program Background and Applicability

The major emphasis of section 112(r) of the CAA is to address the prevention of catastrophic accidents caused by the release of extremely hazardous substances into the air. The CAA section 112(r) requirements include a general duty provision; the development of a list of regulated substances with thresholds; a petition process for adding and deleting substances; prevention, detection and correction regulations and guidance; guidance for the use of the emergency order authority; and a study of release prevention, mitigation and response authorities under Federal law. Section 112(r) also contains requirements for the establishment of an independent Chemical Safety and Hazard Investigation Board, whose function will be to investigate accidental releases and make recommendations to EPA, OSHA and

States on various changes that should be instituted to prevent chemical accidents.

Rules developed under the provisions of section 112(r) will be codified in 40 CFR part 68 and will apply to stationary sources that manage or store a regulated substance at more than the associated threshold quantity. The definition of stationary source for section 112(r) is different from the definition of stationary source used in all other subsections of section 112. Applicability is not based on emissions from the source or the chemicals listed in section 112(b), consequently there will not be total overlap with the sources subject to the other section 112 provisions. A major portion of the 40 CFR part 70 permitted sources will be subject to section 112(r). Conversely, a large portion of sources subject to section 112(r) may not be required to receive part 70 permits.

2. Delegation and Approval

Delegation of the Accidental Release Prevention (ARP) program can occur in several ways. If a State chooses to implement the Federal requirements without changes, the ARP program can be delegated at the same time as the 40 CFR part 70 approval process, provided that the requirements of § 63.95 are met in the State's submission. This delegation can occur even if an agency in the State other than the air pollution control agency has been given the responsibility for administering section 112(r).

Alternatively, if a State chooses to administer an ARP program that is different but at least as stringent as the Federal program, the options outlined in § 63.92 or § 63.93 provide for approval of State ARP rules.

The State may submit a State ARP rule for approval any time after the promulgation of today's proposed rule. The State may not, however, receive delegation for the ARP program prior to promulgation of the list of regulated substances and risk management program rule(s) pursuant to section 112(r).

3. State Program Specific Requirements

(a) A State wishing to obtain approval of an ARP rule under section 112(l) must submit to EPA:

(i) Copies of the enabling legislation and regulations that provide the authority for the State to administer the Accidental Release Prevention program;

(ii) Information that documents that adequate resources are available to implement and enforce the provisions of the ARP program;

(iii) An expeditious implementation schedule that indicates the time frames within which the State plans to administer the program;

(iv) A description of the State program that outlines how the State would: Register the subject sources in their State; receive and screen the risk management plans (RMPs); provide technical assistance to subject sources; ensure adequate compliance and enforcement including a risk management plan auditing strategy; and provide coordination mechanisms the State will use with the Chemical Safety and Hazard Investigation Board, the State Emergency Response Commission, and the Local Emergency Planning Committee. In addition, the State may optionally outline those mechanisms which will be used to coordinate with the 40 CFR part 70 permitting program, if the ARP program is not implemented through the agency implementing the part 70 program. States may also describe the interaction of the ARP program with the Chemical Process Safety Management standards promulgated by the Occupational Safety and Health Administration.

(b) Any delegation of the ARP program requires the State program to contain a set of core elements that would ensure compliance with applicable section 112(r) requirements by all subject sources. This interpretation is consistent with the requirements in section 112(l)(5)(A) that requires an approved State program to contain "the authorities to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by EPA under this section." The language in § 63.95 sets out the core requirements for an approvable State ARP program.

The Agency believes that the ARP program cannot be subdivided into various components based on a certain set of chemicals or industry. Subdivision of the program by chemical or by industry would promote confusion for industry and inhibit the integration of the ARP program into State program activities.

In terms of partial delegation of the ARP program by geographic area, today's proposed rule remains consistent with the requirement of the 40 CFR part 70 permit program that allows partial delegation to local agencies, provided that the entire area of the State is covered by a program. It is desirable for the State officials to work closely with local officials to achieve implementation of the ARP program, particularly the Local Emergency Planning Committees (LEPCs). However, the State would retain the overall responsibility for compliance unless local officials choose, in consultation with the State, to assume specific ARP responsibilities for particular areas.

EPA is soliciting comment on whether the State should be delegated authority to develop its own petition process for listing and delisting substances from regulation under the ARP program and whether such delegation would be lawful. State programs must maintain a list of substances with thresholds which are at a minimum at least as stringent as the Federal rules in 40 CFR part 68. The statutory language in section 112(r) contains several other provisions that a State may wish to incorporate into its program. These provisions include a general duty requirement and emergency order authority.

G. Program Review and Withdrawal of Approval

(a) *Program Review.* In order to ensure continuing compliance with the requirements of the CAA regarding approved State rules or programs, EPA is proposing review and evaluation of a State's approved rule or program. The objective of this review process is to maintain effective State rules and programs and to assist States in identifying and correcting any inadequacies as early as possible so that the State may fulfill the regulatory goals of section 112.

Review is necessary in order to assure that a State is continuing to implement and enforce its approved rule or program, that its resources remain adequate to perform its tasks effectively without administrative backlogs, and that its legal authorities have been amended in accordance with any changes in Federal law that would require corresponding changes in State law. Periodic review of the State's implementation schedule is also necessary to ensure that recently promulgated requirements are included in the State's implementation schedule and to reflect the period of time expected for EPA's promulgation of MACT standards and other requirements.

Under the proposed review process, if EPA determines that a State is not adequately implementing or enforcing its approved rule or program according to specified criteria, EPA would notify the State of corrective action that the State must take in order to maintain the rules or program's status. If the State does not act adequately to correct the deficiencies identified by EPA, EPA would notify the State in writing the reasons that it intends to withdraw approval, and a public hearing would be held.

The purpose of the public hearing is to provide an opportunity for the public to comment on EPA's proposed determination that the State's rule or program is inadequate. As a result of public comment presented through this process, other corrective action the State must take or EPA may identify different methods of correcting inadequacies. The EPA would then allow 90 days in which the State may correct the identified deficiencies. Subsequent to a public hearing, EPA may prohibit a State from implementing and enforcing a State program in lieu of future Federal emission standards.

If the State does not correct deficiencies within the prescribed time period, EPA would formally withdraw approval of the State rule or program. This withdrawal of approval is required under section 112(l)(6).

In addition, compliance dates for sources may vary depending on a variety of factors. The regulatory schedule for promulgation of section 112 standards is statutorily mandated and has been proposed for particular source categories [section 112(e)] 57 FR 44147 (1992). Existing sources may have up to 3 years to comply with MACT or Generally Available Control Technology (GACT) standards [section 112(i)(3)(A)]; certain new or reconstructed sources may have an additional 3 years to comply after promulgation of a MACT standard [section 112(i)(2)]; existing sources that make voluntary commitments of emissions reductions may have an additional 6 years to comply [section 112(i)(5)]; existing sources that install Best Achievable Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) may have 5 years from installation to comply with MACT [section 112(i)(6)]; certain new or reconstructed sources may have 10 years after the date of construction is commenced to comply with residual risk standards [section 112(i)(7)]; sources that would have been subject to MACT standards that are not promulgated on schedule have 18 months after the scheduled promulgation date to submit permit applications to establish "equivalent emission limitations" [section 112(j)(2)]; sources subject to accidental release requirements have 3 years to comply [section 112(r)(7)(B)(i)]. The complex nature and prospective application of scheduling requirements necessitates EPA review of a State's implementation schedule.

For review, the State must demonstrate that its approved State rules or program as applied to individual sources are no less stringent than the corresponding Federal rules would be if they were applied to those sources. This demonstration is necessary to ensure that State rules or program as applied over time are at least as stringent as the Federal rules. This stringency test is required by section 112(l)(1).

In order to spell out the details of implementation of State rules or programs, EPA and the State may enter into a memorandum of understanding. Such a memorandum of understanding may provide for periodic review by EPA which may include review of compliance with the State program as approved.

Several other Clean Air Act programs, including 40 CFR part 70 permit programs, contain provisions for EPA review of a State's activities. The EPA encourages coordination among these review processes to the extent possible in order to simplify administration and decrease the burden of review and evaluation on both the Agency and the State. Coordination will save resources and will foster consistency among the different programs. The Agency solicits comment on possible coordination strategies.

The EPA may initiate a review at any time. If, at any time, EPA determines that the State's implementation or enforcement is not adequate according to the criteria in § 63.96, EPA may then initiate the withdrawal process. Nevertheless, it is EPA's intention to encourage states to correct any deficiencies and to work with the States to accomplish the objective of maintaining adequate programs rather than to withdraw approval.

(b) Withdrawal of Approval. When EPA requests information in order to review the adequacy of the implementation and enforcement of a State's approved program and evaluates that information according to the criteria specified in § 63.96(a)(3), EPA may find that the State's program is inadequate. In that case, EPA would inform the State in writing of its determination and would inform the State of the reasons for its determination. The EPA may determine that a State's program is inadequate on the basis of inadequacy of authorities that will assure compliance with standards established by EPA, of inadequacy of implementation authority or resources, on the basis that implementation or compliance dates are insufficiently expeditious, on the basis that EPA believes that the implementation and enforcement of the State rule or program is less stringent than the requirements that would result from the otherwise applicable Federal rules, or on the basis that the State's rule or program is not otherwise being administered and enforced in accordance with the criteria of section 112(l)(5).

A State so informed by EPA must take action sufficient to correct the deficiencies identified by EPA. If the State takes no corrective action or if the State's corrective action is inadequate, EPA would notify the State that EPA intends to withdraw approval of the program. The EPA would then publish a notice for a public hearing to be held no sooner than 30 days from the date of publication of the notice in order to provide an opportunity for interested members of the public to comment on EPA's proposed decision to withdraw approval of the State program. If EPA determines after the public hearing that the State is not adequately administering and enforcing its program, EPA must notify the State. If the State does not take action within 90 days that will assure compliance, EPA must withdraw approval.

These procedures are required by section 112(l)(6) of the Act that provides for written notice to the State, a public hearing, a 90 day opportunity to correct identified problems and other procedures. Periodic review, as well as discretionary review, by EPA may result in a determination that a State is not adequately implementing or enforcing its program. If this occurs, the statute requires that the State must be notified and given an opportunity to correct any deficiencies, EPA must specifically identify the deficiencies and actions to be taken by the State that will correct the deficiencies, and the State must be allowed at least 90 days to correct the deficiencies. In addition, the public must be given an opportunity to provide comments to EPA before EPA's determination has been finalized. Not until after the public hearing is held may EPA finally determine that it shall withdraw approval.

Once the required procedures have been followed, if EPA determines that the State is not adequately implementing and enforcing its program, EPA must withdraw approval. This is required by section 112(l)(6) of the Act.

Partial Withdrawal. Consistent with EPA's ability to approve State rules and programs in installments responsive to periodic promulgation of Federal standards and requirements, EPA may confine withdrawal actions to portions of a State program. This provides flexibility and contributes to a more workable program by allowing those portions of a State's program that are functioning adequately to proceed without disruption, while those

portions that are not being adequately implemented or enforced may be withdrawn from the approved program. When this occurs, sources subject to the requirements of the withdrawn portion of the State's program would be subject to the underlying Federal standard according to a compliance schedule published by EPA, while sources subject only to requirements of the portions of the State program not withdrawn would remain subject to the still approved State requirements.

The EPA may withdraw approval for individual State standards that correspond to Federal standards under section 112 (d), (f) or (h), or (r) as specified in § 63.95. In addition, EPA may withdraw approval of rules that correspond to Federal rules under section 112 (g), (i), or (j). EPA solicits comment on whether such programs should be treated as integrated complete programs or whether they might be treated as programs with separable elements for purposes of approval or withdrawal of approval.

Effect of Withdrawal on 40 CFR Part 70 Permits and Other Permits. Upon withdrawal of approval of a State rule or program, those approved State requirements are no longer the applicable requirements under 40 CFR part 70. When withdrawal of approval occurs, the State must institute proceedings to reopen any 40 CFR part 70 permits affected by the approval that has been withdrawn and revise the permit to delete the State standard or requirement as the applicable requirement and reinstate the underlying Federal standard or requirement as the applicable requirement with which the source must comply. Upon withdrawal EPA will publish a reasonable compliance schedule for the source to meet the requirements of the reinstated Federal standard. The Agency solicits comments on the likelihood of withdrawal related changes in control technology and other aspects of the effect on sources of withdrawal of portions of a State's program.

Other Provisions. If EPA withdraws approval for only a portion of a State program, the portions of the program for which approval has not been withdrawn would remain approved and in effect.

If EPA withdraws approval of a State rule or program or portion of a program, the State may apply for renewed approval as long as it has corrected the deficiencies for which EPA withdrew approval initially.

A State may voluntarily withdraw its rule or program as an approved program. In order to do this, the State must inform EPA of its intention and must provide public notice and opportunity to comment on the withdrawal. The withdrawal may not take effect until 180 days after the State notifies EPA, in order to provide sufficient time for EPA to assume implementation and enforcement responsibilities as necessary. If a State has an approved part 70 program, the State must assume responsibility for implementing and enforcing the otherwise applicable Federal rule once the approved State rule is withdrawn.

IV. Administrative Requirements

A. Coordination With Other Clean Air Act Requirements

Operating Permit Program. Under title V of the Clean Air Act as amended in 1990, all HAP-emitting sources will be required to obtain an operating permit. As discussed in the rule establishing the operating permit program published on July 21, 1992 (57 FR 32251), this new permit program would include in a single document all of the emission limits, monitoring, recordkeeping, and reporting requirements that pertain to a single source. The permit will contain federally enforceable conditions with which the source must comply. Once a State's permit program has been approved, each affected source within that State must apply for and obtain an operating permit. If the State does not have an approved permitting program, a submittal must be made to the Regional Office.

B. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule". The impact of this regulation is not major because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; and (2) The standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. Since the submission of a section 112(l) program is not compulsory under the Act, the costs of this rule will be borne only by those States and other air pollution control agencies which voluntarily develop and submit a section 112(l) program or take other approved actions under section 112(l). The EPA has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain OMB clearance for collection of information from ten (10) or more non-Federal respondents. Under this proposed rule, each State or other air pollution control agency which elects to develop a section 112(l) program, or to take any other approved actions under section 112(l), shall be required to submit to the Administrator a program, written findings, schedules, plans, statements, and/or other documentation required for approval of the submitted program or action. The effect of this rule is to subject those States and other air pollution control agencies utilizing section 112(l) to the informational requirements of this rule in order to assure that the requirements of a 112(l) program or approved action have been met under section 112(l)(5) of the Act. These statutory requirements for approval give rise to the informational requirements of this rule.

The information collection requirements of this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (OMB No. 1643.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. EPA, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

The burden to States and other air pollution control agencies for the collection of information under this rule for the first year is estimated to be a maximum of 1901 hours per State or agency. This estimate includes time for rule interpretation, analysis and/or revision of state or local legislative authority, development of a program and schedule of implementation, as well as demonstrations of adequate resources, compliance and enforcement. Since most of these requirements are not recurring, the burden will decrease significantly in subsequent years.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA believes that there will be no impact on any small entities as a result of the promulgation of this rule since all the entities which would have the authority to accept partial or complete delegation of the Administrator under section 112(l) of the Act are States and other governmental jurisdictions whose populations exceed 50,000 persons. With no impacts expected on entities whose populations are less than 50,000, a RFA is not required by law. What follows is the certification of the Administrator that an RFA is not required with the promulgation of this rule. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Review

This regulation will be reviewed 9 years from the date of promulgation. This review will include an assessment of such factors including overlap with other programs, the existence of alternative methods, enforceability, and result of Section 112 standards review.

List of Subjects in 40 CFR Part 63

Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 1993.

Jonathan Z. Cannon,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: Section 112 of the Clean Air Act as amended (42 U.S.C. 7401–7671q).

2. It is proposed that part 63 be amended by adding subpart E to read as follows:

Subpart E—Approval of State Programs and Delegation of Federal Authorities

Sec.
63.90 Program overview.
63.91 Criteria common to all approval options.
63.92 Approval of a State rule that adjusts a section 112 rule.
63.93 Approval of a State rule that substitutes for a section 112 rule.
63.94 Approval of a State program that substitutes for section 112 emission standards.
63.95 Additional approval criteria for a State rule that adjusts or substitutes for the Federal accidental release prevention program.
63.96 Review and withdrawal of authority.
63.97 OMB Control Number.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

§ 63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401–7671q). This subpart establishes procedures for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 amendments to the Act). Authority to implement and enforce section 112 Federal rules as promulgated without changes need not be delegated under procedures established in this subpart. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through a section 112(l) approval.

(a) *Definitions.* The following definitions apply to this subpart. Except as specifically provided in this section, terms used in this subpart retain the meaning accorded to them in Subpart A of this part and under the applicable requirements of the Act.

Affected source means: (1) Any source so defined under subpart A; or (2) For purposes of § 63.95, any stationary source so defined under 40 CFR part 68.

Applicability means the set of all emission points within all affected sources subject to a specific section 112 rule.

Approval means a determination by the Administrator that a State rule or program meets the criteria of § 63.91 and the additional criteria of either § 63.92, § 63.93 or § 63.94. For accidental release prevention programs, the criteria of § 63.95 must also be met.

Compliance and enforcement measures means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling or accident prevention oversight.

Level of control means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for each hazardous air pollutant or for each substance regulated under 40 CFR part 68.

Local agency means a local air pollution control agency or, for the purposes of § 63.95, any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at a source regulated under section 112(r).

Program means a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

Stringent or stringency means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control and compliance and enforcement, or as otherwise determined by the Administrator.

(b) *Local agency coordination with state and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial

agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Authorities retained by the Administrator.* (1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b);

(ii) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(iv) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation;

(v) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under Title V of the Act.

§ 63.91 Criteria common to all approval options.

(a) *Approval process.* To obtain approval of a rule or program under this subpart, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For the accidental release prevention program, the criteria of § 63.95 must also be met.

(1) Upon receipt of a request for approval, EPA will review the request for approval and notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 180 days of receiving a complete request for approval, the Administrator will either approve or disapprove the State rule or program.

(3) If the Administrator finds that: any of the criteria of this section are not met; or any of the criteria of either § 63.92, § 63.93 or § 63.94 under which the request for approval was made are not met; or the State rule or program is not likely to satisfy the objectives of the Act in whole or in part, the Administrator will disapprove the State rule or program. If a State rule or program is disapproved, the Administrator will notify the State of any revisions or additions necessary to obtain approval. Any resubmittal by a State of a request for approval will be considered a new request under this subpart.

(4) If the Administrator finds that: all of the criteria of this section are met; and all of the criteria of either § 63.92, § 63.93 or § 63.94 are met, and unless the Administrator finds that the State rule or program is not likely to satisfy the objectives of the Act in whole or in part, the Administrator will approve the State rule or program and thereby delegate authority to implement and enforce the approved rule or program in lieu of the otherwise applicable Federal rules, emission standards or requirements. When a State rule or program is approved by the Administrator under this subpart, operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's 40 CFR part 70 permits or otherwise implemented or enforced by the State or by EPA unless and until authority to enforce the approved State rule or program is withdrawn from the State under § 63.96. The approved State rule or program shall be Federally enforceable from the date of publication of approval. Operating permits for sources subject to an approved rule or program shall contain language stating that in the event approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and that the relevant 40 CFR part 70 permits shall be revised according to the provisions of § 70.7(g) of this chapter.

(b) *Criteria for approval.* Any request for approval under this subpart shall meet all section 112(1) approval criteria specified by the otherwise applicable Federal rule, emission standard or requirements and all of the approval criteria of this section. The State shall provide the Administrator with:

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and to enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement.

(2) A copy of State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval;

(3) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval;

(4) A schedule demonstrating expeditious State implementation of the rule or program upon approval;

(5) A plan that assures expeditious compliance by all sources subject to the rule or program upon approval;

(6) A demonstration of State procedures that assure adequate enforcement of the rule or program upon approval. At a minimum the State rule or program compliance and enforcement measures must meet the following requirements.

(i) The State shall have enforcement authorities that include those described in 40 CFR 70.11.

(ii) If a State delegates authorities to a local agency, the State must retain enforcement authorities unless the local agency has authorities that include those described in 40 CFR 70.11.

(iii) The State shall have authority to request information from regulated sources regarding their compliance status.

(iv) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(c) *Revisions.* Within 90 days of any State amendment, repeal or revision of any State authorities supporting an approval under this subpart, a State must provide the Administrator with a copy of the revised authorities and either:

(1) Provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the State with approved rules, the approved program (as applicable) and each applicable section 112 rule, emission standard or requirement; or

(2) Request approval of a revised rule or program. Within 180 days and after notice and opportunity for public comment, the Administrator will approve or disapprove the revised rule or program.

(i) If the Administrator approves the revised rule or program, the revised rule or program will replace a rule or program previously approved.

(ii) If the Administrator disapproves the revised rule or program, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previous approved rule or program that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule or program, the previously approved rule or program remains Federally enforceable.

§ 63.92 Approval of a State rule that adjusts a section 112 rule.

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator, published in the **Federal Register** and incorporated, directly or by reference, under subpart A, without additional notice and opportunity for comment. Rules approved under § 63.95 will be incorporated under part 68 of this chapter.

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point, the Administrator will disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule; and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or *de minimis* level;

(ii) Shortening a minimum averaging time;

(iii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iv) Increasing a required control efficiency;

(v) Increasing an emission trading discount factor;

(vi) Increasing the frequency of required reporting, testing sampling or monitoring;

(vii) Adding to the amount of information required for records or reports;

(viii) Decreasing the amount of time to come into compliance;

(ix) Limiting or precluding emission trading credit for certain emission reductions;

(x) Increasing a required offset ratio;

(xi) Limiting or precluding opportunities for emissions averaging or trading;

(xii) Subjecting additional emission points or source within a source category to control requirements; and

(xiii) Any adjustments allowed in a specific section 112 rule.

§ 63.93 Approval of a State rule that substitutes for a section 112 rule.

Under this section a State may seek approval of a State rule which differs in form from a Federal section 112 rule for which it would substitute, such that the State rule does not qualify for approval under § 63.92

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator under this section and the approved rule will be published in the **Federal Register** and incorporated directly or by reference, under subpart A of this part. Rules approved under § 63.95 will be incorporated under part 68 of this chapter.

(3) If the Administrator finds that any of the requirements of this section of § 63.91 have not been met, the Administrator will disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with a demonstration that the State rule contains or demonstrates:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control and compliance and enforcement measures that when considered together, result in emission reductions from each affected source that are no less stringent for each affected source than those that would result from the otherwise applicable Federal rule;

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule.

(4) At a minimum, the approved State rule must include the following compliance and enforcement measures whenever they are a part of the rule for which the approved rule would substitute.

(i) The approved rule must include a method for determining compliance.

(ii) If a standard in the approved rule is not instantaneous, a maximum averaging time must be established.

(iii) The rule must establish an obligation to periodically monitor or test for compliance using the method established per § 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

(iv) The results of monitoring or testing must be reported.

§ 63.94 Approval of a State program that substitutes for section 112 emission standards.

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards, emission standards or requirements promulgated under sections 112(d), (f) or (h), for those affected sources permitted under 40 CFR part 70.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section the Administrator will seek public comment on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to

comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State program will be approved by the Administrator. The approved State commitment made under paragraph (b)(2) of this section and reference to all documents submitted under § 63.91(c)(2) will be published in the Federal Register and incorporated directly or by reference under subpart A.

(3) If the Administrator finds that any of the criteria of this section of § 63.91 have not been met, the Administrator will disapprove the program for approval.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A reference to all specific sources of source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under this section;

(2) A legally binding commitment adopted through State law that, after approval;

(i) For each source subject to Federal section 112 emission standards or requirements for which approval is sought, 40 CFR part 70 permits shall be issued or revised by the State in accordance with procedures established in 40 CFR part 70 and in accordance with the schedule submitted under § 63.91(c)(5) assuring expeditious compliance by all sources; and

(ii) All such issued or revised part 70 permits shall contain conditions that:

(A) Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

(B) Require levels of control for each source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements;

(C) Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements;

(D) Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement;

(E) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.

§ 63.95 Additional approval criteria for a State rule that adjusts or substitutes for the Federal accidental release prevention program.

(a) A State submission for approval of an ARP program must meet the criteria and be in accordance with the procedures of this section and § 63.91 and either § 63.92 or § 63.93, as appropriate.

(b) A state may apply for approval of its ARP program any time after the promulgation of this rule and after promulgation of the list of substances and risk management program rules(s) required by subsections 112(r) (3) and (7), respectively.

(c) The State ARP program application shall contain the following elements consistent with the procedures in § 63.91 and § 63.92 or § 63.93 of this subpart:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations in 40 CFR part 68 that specify substances, related thresholds and a risk management program;

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) and consistent with the requirements in § 68.12 of this chapter;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to § 68.50(i) of this chapter;

(iv) Providing technical assistance to subject sources, including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy that is consistent with 40 CFR 68.60;

(4) A description of the coordination mechanisms the State will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees.

(d) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (c) of this section.

§ 63.96 Review and withdrawal of approval.

(a) *Submission of information for review of approval.*

(1) The Administrator may at any time request the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate the availability of adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program that assures compliance with all section 112 rules and requirements that EPA has promulgated since approval or the immediately previous EPA review;

(v) A list of 40 CFR part 70 or other permits issued, amended, revised, or revoked since approval or the immediately previous EPA review, for sources subject to a State rule or program approved under this subpart; and

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) *Withdrawal of approval of a State program.*

(1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the

State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. Public comment should be submitted concurrently to the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate regulatory or statutory authority or resources to implement or enforce the approved rule or program, or

(ii) The State is not implementing or enforcing the approved rule or program in accordance with the criteria of this subpart; or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State program for which approval is withdrawn will no longer be Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will be the Federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the State shall reopen, under the provisions of 40 CFR 70.7(g), the 40 CFR part 70 permit of each source subject to the previously approved rules or programs in order to revise the applicable requirements for each source.

(ii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to 40 CFR part 70 permits, the applicable State rules are no longer Federally enforceable.

(iii) Upon withdrawal, the Administrator will publish a timetable for sources subject to the previously approved rule or program to come into compliance with applicable Federal requirements.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not so withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by EPA as specified in section 112(l)(7) of the Act.

(5) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new program or portion of a program is approvable according to the criteria and procedure of § 63.91 and either of § 63.92, § 63.93 or § 63.94.

(6) A State may voluntarily withdraw from an approved State rule, program or portion of a program by notifying EPA and all affected sources and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the State must reopen and revise the 40 CFR part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(g) and the Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(ii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by EPA as specified in section 112(l)(7) of the Act.

(iii) Voluntary withdrawal shall not be affective sooner than 180 days after the State notifies EPA of its intent to voluntarily withdraw.

§ 63.97 OMB Control Number.

The Information Collection Requirements in this Subpart have been approved by the Office of Management and Budget and assigned OMB Control No. _____.

[FR Doc. 93–11248 Filed 5–18–93; 8:45 am]

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federal register

Wednesday
May 19, 1993

Part IV

Environmental Protection Agency

Request for Comment on Petition To Revoke Certain Food Additive Regulations for Benomyl and Mancozeb; Office of Pesticide Programs; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-300285; FRL-4583-2]

Request for Comment on Petition To Revoke Certain Food Additive Regulations for Benomyl and Mancozeb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Receipt and Availability of Petition.

SUMMARY: This document announces the receipt of and solicits comment on two petitions proposing the revocation of certain section 409 food additive tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA). This notice sets forth the basis for the petitioners' proposal and provides opportunity for comment by the public.

DATES: Written comments, identified by the document control number, [OPP-300285], must be received on or before June 18, 1993.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Copies of the petition will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Niloufar Nazmi, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF31L1, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8028.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1, and ASCII.

I. Introduction

Statutory Framework

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 136 et seq.) authorizes the establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RACs) in section 408 of the act, and the promulgation of food additive regulations for pesticide residues in processed foods under section 409 of the act (21 U.S.C. 346(a), 348).

Under section 408 of the act, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409 of the act. Section 409 tolerances are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 tolerance is required if any pesticide residue in a processed food resulting from use on a RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on the RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 tolerance is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(C)(3)). Section 409 also contains the Delaney Clause, which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals (21 U.S.C. 348(C)(5)).

In setting both section 408 and 409 tolerances, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a raw agricultural commodity based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 tolerance is needed depends on whether there is a possibility that the processing of a raw agricultural commodity containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance.

II. Petitions

EPA has received two petitions, from the E.I. du Pont de Nemours & Co. and the Mancozeb Task Force, regarding the revocation of certain tolerances established under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). Both petitioners claim that no food additive tolerances are necessry for these uses because residues do not concentrate during processing. The following sets forth the basis for the petitioners' requests. (A full copy of the petitions and their attachments, including the referenced studies, is available as described in the ADDRESSES section above in this document.)

E.I. du Pont de Nemours & Co.

E.I. du Pont de Nemours & Co. has submitted a petition requesting revocation of the tolerance established under section 409 of the FFDCA for combined residues of the fungicide benomyl (methyl-1-(butylcarbamoyl)-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in concentrated tomato products. The tolerance level for benomyl in concentrated tomato products is 50 parts per million (ppm) (40 CFR 185.350). The tolerance level under section 408 of the FFDCA for tomatoes is 4 ppm (40 CFR 180.294).

According to the petition, benomyl residues are primarily surface residues that wash away during the preparation of tomatoes for processing. The section 409 tolerance was originally set on the basis of a study where tomatoes were not washed, which is not the way tomatoes are actually handled, when being processed into concentrated tomato products. The petition cites recent studies to support the contention that total benomyl residues in concentrated tomato products are below the residues in the RAC. The petition further notes that the FDA/USDA sampling of processed tomato products in 1991 also indicates that no concentration of benomyl residues occurs during processing.

The Mancozeb Task Force, Including E.I. du Pont de Nemours & Co., Elf Atochem North America, Inc., and Rohm and Haas Co.

The Mancozeb Task Force has submitted a petition requesting the revocation of tolerances established under section 409 of the FFDCA for a fungicide which is a coordination product of zinc ion and maneb (manganous ethylene-bisdithiocarbamate, hereinafter referred to as mancozeb) in or on certain processed foods. The processed foods included in this petition are raisins, bran of barley, oats, rye, and wheat, and the flours of barley, oats, rye, and wheat. These tolerances are currently listed in 40 CFR 185.6300. The tolerance levels under section 408 of the FFDCA for grapes and the grains of barley, oats, rye, and wheat are currently listed in 40 CFR 180.176.

The section 409 tolerance for mancozeb on the flours of barley, oats, rye, and wheat is set below the section 408 tolerance for these grains. The lower level for flour was based on FDA's conclusion that good manufacturing practices reduce mancozeb residues in flour (32 FR 7523, May 23, 1967). It should be noted that revoking the section 409 tolerance for mancozeb on flours of barley, oats, rye, and wheat will actually allow a higher level of residues to be legally used on these commodities.

The petition requests revocation of the section 409 tolerance for mancozeb on raisins on the basis of data showing that residues in grapes do not concentrate in raisins. No concentration occurs according to the petition since mancozeb results only in surface residues that wash away during normal handling and processing.

For residues in bran and flour, the petition states that the residues do not concentrate. In support of this position, the petition notes that mancozeb is applied during the early growth stages of wheat, barely, oats, and rye, and that any residues detected in the harvested grain occur from contamination with treated straw or ground. Furthermore, the petition cites submitted data to support the claim that residues in processed grains do not exceed the residues for the grain.

III. Conclusion

EPA has received petitions from E.I. du Pont de Nemours & Co. and the Mancozeb Task Force requesting revocation of certain food additive regulations. The petitioners claim that no section 409 tolerances are necessary for these uses because the residues do not concentrate during processing. EPA announces the receipt of and solicits comment on these two petitions. EPA especially requests comment on the request to revoke the mancozeb tolerances for various flours because the rationale stated in the petition (that residues decrease during processing) was the reason these tolerances were set at a lower level than the section 408 tolerances.

It should be noted that there is currently another petition before EPA requesting the revocation of the benomyl food additive tolerance for concentrated tomato products and the mancozeb food additive tolerances on raisins and bran of wheat. The petition asserts that these food additive tolerances should be revoked because of the Delaney anti-cancer clause in section 409. EPA's earlier order denying that petition as to these tolerances was set aside by the U.S. Court of Appeals, Ninth Circuit, in *Les v. Reilly*, 968 F. 2d 985 (9th Cir. 1992).

Pursuant to 40 CFR 177.125 and 177.30, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order in response to the petition, a person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after date of the publication of the order. 40 CFR 178.20.

Authority: 7 U.S.C. 346a and 348.

Dated: May 1, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–11874; Filed 5–18–93; 8:45 am]

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federal register

Wednesday
May 19, 1993

Part V

Department of Transportation

Research and Special Programs Administration

Application for a Preemption Determination as to Hazardous Materials Training and Certification Requirements Imposed by the Maryland Department of the Environment; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-12(R)]

Application by Chemical Waste Transportation Institute and National Tank Truck Carriers, Inc. for a Preemption Determination as to Hazardous Materials Training and Certification Requirements Imposed by the Maryland Department of the Environment

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Institute (CWTI) and National Tank Truck Carriers, Inc. (NTTI) have applied for an administrative determination as to whether the following Maryland Department of the Environment (MDE) regulations are preempted by the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1801 *et seq.*): (1) Code of Maryland Regulations (COMAR) 26.10.01.17.A, which requires hazardous materials training and certification of non-domiciled drivers of cargo tanks transporting oil to or from points in Maryland; and (2) COMAR 26.13.01.F, which requires hazardous materials training and certification of non-domiciled drivers transporting "controlled hazardous substances" to or from points in Maryland. Drivers transporting covered hazardous materials through the State are excluded from the above training and certification requirements.

DATES: Comments received on or before June 23, 1993, and rebuttal comments received on or before August 29, 1993, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised in comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, 400 Seventh Street, SW., Washington, DC 20590-0001 (Tel. No. (202) 366-4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA-12(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to: (1) Mr. Stephen Hansen, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., Suite 1000, Washington, DC 20036; (2) Mr. Clifford. J. Harvison, President, National Tank Truck Carriers, Inc., 2200 Mill Rd., Alexandria, Virginia 22314; and (3) Mr. Robert Perciasepe, Secretary, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224. A certification that a copy has been sent to these persons must also be included with each comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Hansen, Harvison and Perciasepe at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. (202) 366-4400).

I. CWTI's and NTTI's Application for a Preemption Determination

On April 16, 1993, CWTI and NTTI filed an application seeking a determination that Maryland's hazardous materials training and certification requirements applicable to non-domiciled drivers transporting certain types of hazardous materials are preempted by the HMTA. The text of CWTI's and NTTI's application follows. (The appendices to the application are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit at the address and telephone number set forth in the ADDRESSES section above.)

Application of the Chemical Waste Transportation Institute and the National Tank Truck Carriers, Inc. to Initiate a Proceeding to Determine that Various Training and Certification Requirements Imposed on Non-domiciled Drivers Transporting Certain Types of Hazardous Materials by the Maryland Department of the Environment are Preempted by the Hazardous Materials Transportation Act

Interest Of The Petitioners

The Chemical Waste Transportation Institute (CWTI) is part of the National Solid Wastes Management Association, a not-for-profit association that represents waste services companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. National Tank Truck Carriers, Inc. (NTTC) is a trade association involved in the nationwide transportation of bulk commodities in cargo tank motor vehicles. Members of both CWTI and NTTC carry various hazardous materials to and from Maryland that are subject to the Department of the Environment's (DE) driver training and certification programs in contravention of the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMRs).

DE Requirements For Which A Determination Is Sought

The DE administers two driver certification programs that require evidence of training. Specifically, the Code of Maryland Regulations (COMAR) [1] requires that all drivers of cargo tanks engaged in the loading or unloading and transport of oil in Maryland obtain a certificate that such drivers have been trained to understand their responsibilities for operating cargo tanks, and in the event of a release, for reporting spills and initiating containment. Oil, including petroleum products and their by-products is defined as "oil of any kind and in any liquid form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils, and every other nonedible liquid hydrocarbon regardless of specific gravity. Oil includes aviation fuel, gasoline, kerosene, light and heavy fuel oils, diesel motor fuels, asphalt, and crude oils, but does not include liquified petroleum gases, such as liquified propane, or any edible oils." [2] The certificate is valid for 5 years.

The second certification program applies to drivers transporting to or from points in Maryland "controlled hazardous substances" (CHS). CHSs are defined as any hazardous substance that the DE identifies as a controlled hazardous substance or low-level nuclear waste. "Hazardous substance" means any substance that conveys toxic, lethal, or other injurious effects or which causes sublethal alterations to plant, animal, or aquatic life, that may be injurious to human beings, or that persists in the environment and at a minimum includes wastes identified as "hazardous" by the US Environmental Protection Agency (EPA).[3] In fact, the DE imposes the CHS training and certification requirements only on drivers transporting such EPA-identified hazardous wastes. The DE requires that all drivers to or from points in the State obtain a certificate attesting that the drivers have received training with respect to federal requirements appearing at 49 CFR parts 172 and 390-397, and 40 CFR part 263, including information specific to the hazardous waste manifest issued by the DE.[4] The certificate must be renewed at least once every three years.

To obtain the oil certificate, a driver has to preregister for a test administered by the DE at specified times and locations. To obtain the hazardous waste certificate, a driver must

[1] See attached COMAR 26.10.01.17. There is no specific statutory authorization for the oil training and certificate program.

[2] COMAR 26.10.10(B)(10).

[3] See Environment Article, Title 7, section 201 (b) and (m).

[4] See attached COMAR 26.13.01.F. and Environment Article, Title 7, section 252.

obtain a statement from his/her employer that the individual has completed an approved training program[5] and pay a fee. Both certificates resemble a driver's license in size and form and must be in the possession of the driver while engaging in covered activities within the State. Drivers transporting covered hazardous materials through the State are excluded from the training and certification programs.

Applicability Of The Hazardous Materials Transportation Act

While neither DE driver certification program appears to be duplicative of or conflicting with the other,[6] the DE's programs certainly are duplicative of and conflicting with federal standards. Most of the materials for which driver's are required to obtain certifications prior to transport—EPA-defined hazardous wastes and substances as well as oil, petroleum products and by-products—are regulated at the federal level under the HMTA.[7] Of the materials mentioned above, only oil-based materials with flash-points of 200 degrees or more are not required to comply with the HMRs until October 1, 1993.[8]

The guiding premise of the HMTA is that uniformity equals safety. In support of this premise, Congress reaffirmed, when the HMTA was reauthorized in 1990, that consistency in laws and regulations governing the transportation of hazardous materials is necessary to minimize the potential of risk to life, property, and the environment from hazardous materials incidents. Absent national consistency, the resulting divergent and conflicting requirements create an enormous burden for the regulated community, undermine the effectiveness of the HMTA, and potentially jeopardize the public safety.[9] In order to ensure uniformity, Congress empowered the federal Department of Transportation (DOT) to preempt non-federal requirements that conflict with or present an obstacle to the accomplishment and execution of the HMTA or the HMRs.[10]

Although the DE excluded from both training and certificate programs drivers that are passing through the state, the exclusion is not broad enough to avoid the preemptive reach of the HMTA. These exclusions may have been written in the belief that the state was satisfying some court-tested interpretation of the Commerce Clause. However, the DE's interpretation provides relief to only a portion of interstate commerce—that which is merely passing through the State—but not that commerce which enters or leaves the State—but not that commerce which enters or leaves the State as a result of a driver delivering or picking up hazardous materials subject to either training and certificate program.

The HMRs provide that "hazmat employees"—persons who perform functions involving the transportation of hazardous materials, including drivers—receive training.[11] Such training includes general awareness/familiarization training, safety training, function-specific training, and for drivers, applicable driver training. The HMRs also make clear that compliance with the commercial driver's license (CDL) requirements for tank vehicles and/or hazardous materials endorsements found at 49 CFR part 383, as well as training for such drivers required by 29 CFR 1910.120 may satisfy some hazmat employee training requirements.

Aside from federal requirements that drivers obtain a CDL with a cargo tank endorsement prior to operating such equipment and a hazardous materials endorsement prior to transporting hazardous materials which in type or quantity would require a placard, the only "certification" of a driver's compliance with the training requirements of the HMRs is a duty imposed on the driver's employer to retain a record for each driver that includes "certification that the (driver) has been trained and tested, as required. * * *"[12]

The HMRs clarify the relationship between federal and state training and certification requirements of drivers.[13] States may impose more stringent training requirements on motor vehicle drivers. However, such authority is not unlimited. States may only impose more stringent requirements if those requirements (1) do not conflict with the HMR training requirements and (2) apply only to drivers domiciled in that state. In addition, a third condition was listed in the preamble to the final rule to the effect that a state's authority to impose more stringent or additional requirements is a recognition of "traditional regulation by States of their own resident drivers * * * through drivers' licensing requirements and procedures." However, the HMRs do not authorize other state governmental agencies to impose such requirements.[14] The Maryland Motor Vehicle Administration, not the DE, issues CDLs in the State of Maryland.

"Otherwise Authorized By Federal Law"

Although the overriding purpose of the HMTA is to enhance safety in the transportation of hazardous materials through uniformity of requirements and standards, Congress recognized that DOT's ability to enforce uniformity through its preemptive authority over state and local requirements is limited to the extent that such non-federal requirements are "otherwise authorized by Federal law."[15] Since the enactment of the 1990 amendments to the HMTA, the courts have acted to circumscribe the reach of the "otherwise authorized by federal law" provisions. The Tenth Circuit Court of Appeals concluded that state requirements which are not specifically authorized pursuant to other federal statutes are not "otherwise authorized" simply because such federal statutes do not preempt such requirements.[16] In this instant case, two additional federal statutes deserve review.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) provides that a state shall only issue CDLs to those persons who operate or will operate commercial motor vehicles and who are domiciled in the state, and that each state must allow any person who has a valid CDL issued by any other state to operate a commercial motor vehicle in all states.[17] Thus, in terms of driver certifications, the condition that defines and limits state authority to issue driver licensing or certification requirements is not the inter- or intra-state nature of the transport or whether the transportation is to or from a state, but whether the driver is domiciled or non-domiciled.

Neither the Resource Conservation and Recovery Act (RCRA)[18] nor its implementing regulations specifically authorize any non-federal driver training or certification requirements. In fact, RCRA bars EPA from promulgating regulations applicable to transporters of hazardous waste that are inconsistent with the requirements of the HMTA and the HMRs.[19] The regulatory history implementing RCRA shows that the DOT and EPA were so concerned about the possibility that compliance with duplicative requirements could cause such inefficiency

[5] To receive approval for a training program, the program must be submitted to the DE for evaluation based on established criteria. Approved programs are issued an authorization letter. Similar letters of authorization must also be obtained to certify each program instructor.

[6] Annotated Code of Maryland, Environment Article, section 4–401(c) specifically excludes from the oil transport certification materials identified as hazardous substances under the Comprehensive Environmental Resource Compensation and Liability Act of 1980, 42 USC 9601.

[7] See 49 CFR 173.120 for definitions of flammable and combustible liquids; 49 CFR 171.8 definition of "oil" as amended by 58 FR 6870 (February 2, 1993) and "hazardous material" as amended by 57 FR 52935 (Nov. 5, 1992); 49 CFR 171.3(a) as pertaining to regulatory authority to regulate hazardous waste; Pub. L. 93–633, Section 103(2) for a definition of "hazardous material;" Pub. L. 94–580, section 1004(5) for a definition of "hazardous waste;" and Pub. L. 99–499, section 306(a), referencing section 101(14) for DOT authority to regulate RCRA-regulated hazardous wastes as hazardous materials in transportation.

[8] See 58 FR 6864 (February 2, 1993).

[9] See Pub. L. 101–615, section 2.

[10] See Pub. L. 101–615, section 13(a).

[11] See 49 CFR part 172 subpart H and 49 CFR 177.800(c) and 177.816. While DOT's preemptive authority over these requirements became operative April 1, 1993, we realize that the effective date of these requirements has been delayed until October 1, 1993. See 57 FR 20948 (May 15, 1992) and 58 FR 5850 (January 22, 1993). Any preemption decision that may be issued on this matter would ideally coincide with the DOT October 1st effective date. In no case do the petitioners seek preemption of these requirements prior to the effective date of the federal requirements.

[12] See 49 CFR 172.704(d)(5).

[13] See 49 CFR 172.701.

[14] See 57 FR 20947 (May 15, 1992).

[15] See Pub. L. 101–615, section 4(a)(4)(A) and 13(a).

[16] See *Colo. Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1581 n.10 (10th Cir. 1991).

[17] See Pub. L. 992–570, section 12009(a) (12) and (14). Additionally, it should be noted that the CMVSA specifically requires drivers operating cargo tanks and/or transporting hazardous materials in types or quantities which require a placard pursuant to 49 CFR part 172 subpart F to obtain endorsement(s) to the basic commercial driver license to verify the competence of such drivers to engage in these specialized transportation operations.

[18] See Pub. L. 94–580.

[19] See Pub. L. 94–580, section 3003(b).

or confusion that they believed the HMRs are "capable of being modified under the HMTA to address the transportation hazards of waste materials and that the RCRA states the need for such a modification."[20] When EPA delegates its authority to issue regulations to a state, the state's hazardous waste program must be equivalent to the federal program and consistent with other state authorized programs.[21]

While RCRA does not have a mechanism to prohibit states from imposing requirements on the transportation of hazardous waste which are more stringent or broader in scope than those imposed by EPA, states may not rely on RCRA to shield such requirements from review under the HMTA. The legislative history underpinning RCRA's grant of "more stringent than" authority to states shows that Congress intended to allow states to create rules "more stringent than" the federal standards only for the selection of hazardous waste disposal sites.[22] Additionally, requirements which are broader in scope than EPA's are not part of the federally-approved program.[23] EPA clarified, in a letter to CWTI concerning its grant of final authorization to California's hazardous waste program, that "State hazardous waste transportation requirements that are inconsistent with the HMTA should be dealt with through the (DOT) under the special procedures established under the HMTA for that purpose; * * * in (EPA's) view the RCRA process does not preempt DOT authority in the area of transportation."[24]

Efforts To Seek Alternative Resolution Of This Issue

By letter dated June 1, 1992, Secretary Perciasepe solicited comments for improving the DE in the face of increased responsibilities and diminishing resources. In response, the CWTI and the NTTC urged the DE to eliminate the above referenced driver training and certification programs for non-domiciled drivers that transport hazardous waste and oil. The CWTI/NTTC recommendation was considered by the Maryland Controlled Hazardous Substance Advisory Council (Council). On November 4, 1992, the Council submitted its recommendations to Secretary Perciasepe. The recommendations provided that:

Maryland's requirements largely duplicate the HMTA's regulations. (The Council) think(s) the federal regulations are sufficient, and note(s) that they have been recently improved and amended * * * Moreover, because of the Department's interest in eliminating duplicative regulation, we believe it is in the Department's best interests to eliminate Maryland's driver training and certification programs in favor of the federal Department of Transportation programs * * *.[25]

In response to this recommendation, the DE included in legislation considered during the 407th Session provisions to eliminate the certification requirements for drivers transporting CHSs.[26] Regrettably, this legislation was not enacted. The Maryland Legislature has adjourned until January 12, 1994. In view of these facts, the fact that the CWTI/NTTC are not aware of any effort by the DE to simultaneously eliminate the training and certification requirements for drivers transporting oil, and the fact that other states have driver training requirements, the CWTI/NTTC have forwarded this petition to RSPA for resolution.

The DE Driver Training and Certification Requirements Are In Conflict With The "Dual Compliance" and "Obstacle" Tests

The HMTA provides several tests to determine the consistency of state requirements to federal standards. We assert that the DE training and certification requirements for drivers transporting oil and hazardous wastes are in conflict with the "dual compliance" and "obstacle" tests.[27]

To the extent the HMRs recognize the CDL with its hazardous materials and/or cargo tank endorsements as "certification" of federal training requirements, a driver cannot comply with the requirement that "no person who operates a commercial motor vehicle * * * have more than one driver's license." The certification cards required by both DE driver training and certification programs are required to be possessed in the same manner as a CDL. Moreover, the HMRs flatly prohibited additional or more stringent training and certification requirements on non-domiciled drivers. Non-domiciled drivers transporting oil and CHSs to or from points in Maryland cannot avoid the DE requirements.

If the DE requirements are allowed to stand, other states could require state-issued certification cards prior to transporting covered hazardous materials to or from points in any such state. While enormous, the burden of such paperwork compliance would pale in comparison to the demands on company training programs to adjust to every addition or more stringent training requirement that a state may choose to impose to qualify drivers in anticipation that the driver may be in a position to transport hazardous materials to or from points in a state, particularly, if such programs required pre-approval as is the case with the DE's CHS program. These requirements become infinitely more burdensome for non-domiciled drivers who must preregister for tests at specified times and locations such as are administered by the DE for drivers transporting oil. The degree to which the DE training and certification requirements for CHS apply only to hazardous waste and apply differently from or in addition to the HMR training and recordkeeping requirements and thus create an obstacle to the accomplishment and execution of the HMTA and the HMRs, they should also be reviewed under the inconsistency restrictions of 49 CFR 171.3(c).[28]

Conclusion

The goals of the DE to ensure that drivers of hazardous waste and/or oil materials operate safely is laudable. We do not object to state interest in promoting safety. We do not dispute the DE's ability to determine and impose training and certification requirements on drivers of hazardous waste, oil or any other commodity when such drivers are domiciled in Maryland. What cannot be tolerated in a transportation setting, however, is unilateral state action at odds with federal prohibitions to the contrary. It is clear to us that the continued application of the DE training and certification requirements on non-domiciled drivers after October 1, 1993 is a matter ripe for preemption under the HMTA and the HMRs.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to: Robert Perciasepe, Secretary, Department of the Environment, 2500 Broening Highway, Baltimore, MD 21224.

Respectfully submitted,

Stephen Hansen,

Chairman, Chemical Waste Transportation Institute.

Clifford J. Harvison,

President, National Tank Truck Carriers, Inc.

Enclosures

Attachments

- COMAR 26.10.01.17.
- Environment Article, Title 7, section 201(b) and (m), and Section 252.
- COMAR 26.13.01.C.
- Letter to Cynthia Hilton, NSWMA, from Deveraux Barnes, EPA, dated October 29, 1992.
- Letter to Robert Perciasepe, DE, from Scott Burns, Controlled Hazardous Substance Advisory Council.
- Maryland SB 856.
- Maryland HB 270.

II. Background

The HMTA was enacted in 1975 to give the Department of Transportation

[20] See 43 FR 22626 (May 25, 1978).

[21] See Pub. L. 94–580, section 3006(b).

[22] See 125 Cong. Rec. S6824–5, Daily Ed., June 4, 1979. The courts have upheld this view. See *Ensco Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986) (section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Servcs.* v. *City of San Diego*, 687 F. Supp. 1436 (S.E. Cal. 1988) (Citing *Ensco*).

[23] See 40 CFR 271.1(i).

[24] See attached letter to Cynthia Hilton, CWTI, from Devereaux Barnes, EPA, dated October 29, 1992.

[25] See attached letter to Robert Perciasepe, DE, from Scott Burns, Council, dated November 4, 1992.

[26] See attached copies of HB 270 and SB 856. No legislative change is needed to eliminate the training and certification requirements for drivers transporting oil because the Maryland Environment Article authorizing the oil management and response program does not specifically require driver training or certification.

[27] See 49 CFR 107.202(b).

[28] See 49 CFR 171.39C)(1). In the preamble to this rule, RSPA stated the "Section 171.3(c) does not list all the conditions under which it might view a State or local law as 'inconsistent.'" 45 FR 35587 (May 22, 1980).

greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. A key aspect of the HMTA is that it replaced a patchwork of State and local laws. The U.S. Court of Appeals for the Tenth Circuit recognized, in *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991), that "[U]niformity was the linchpin in the design of [the HMTA]."

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe * * *" if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of a regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA] or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements]. 49 App. U.S.C. 1811(a).

Section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe * * *" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations promulgated pursuant to the HMTA. State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b), and requirements "otherwise authorized by Federal law," are excepted. Section 1804(a)(4) lists the five "covered subjects" as:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. District Court within 60 days after the determination become final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated the RSPA the authority to make determinations of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. Any person aggrieved by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for preemption determinations, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685 (Oct. 30, 1987)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

III. Further Comments

All comments should be limited to the issue of whether Maryland's hazardous materials training and certification laws applicable to non-domiciled drivers transporting oil or controlled hazardous substances are preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance," and "obstacle" tests described in Part II above. Comments should also address the issue of whether Maryland's hazardous materials training and certification regulations are "otherwise authorized by Federal law."

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on May 13, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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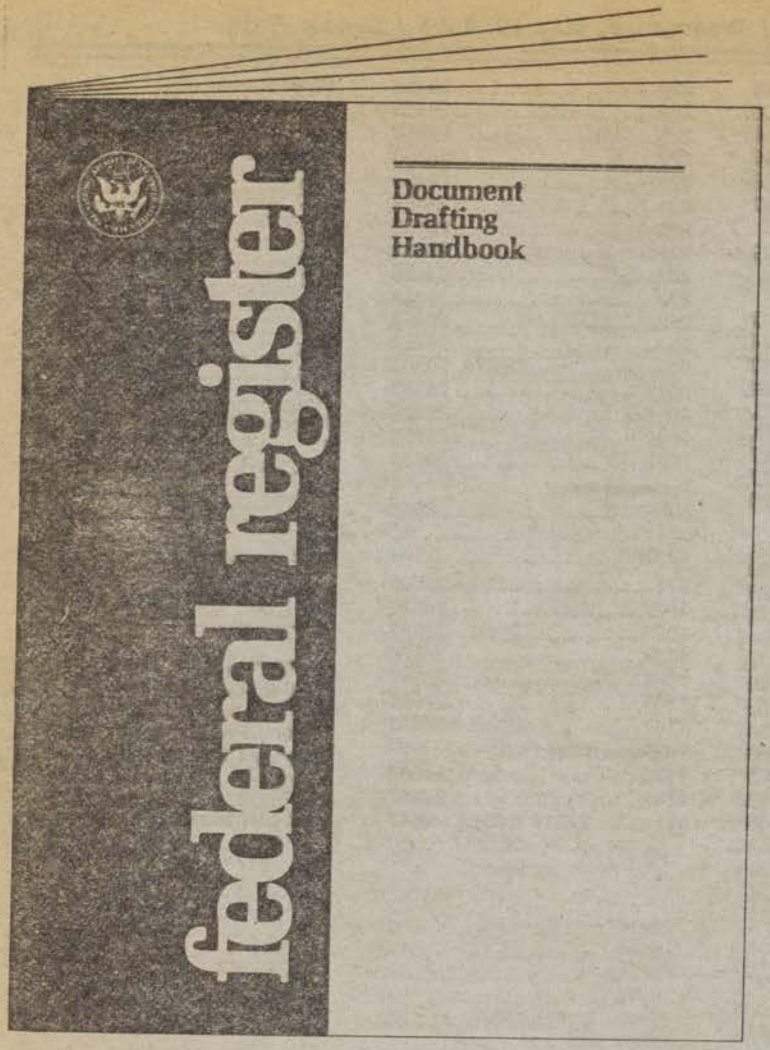

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