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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–60–AD; Amendment 39–8799; AD 94–02–02]

Airworthiness Directives: Rockwell International/Collins Air Transport Division DME–700 Distance Measuring Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Rockwell International/Air Transport Division (Collins) DME–700 distance measuring equipment (DME) installed on aircraft. This action requires modifying these DME units to ensure they are functioning properly. Several reports of the affected DME units failing to process and update distance outputs, and reports of these units establishing a continuous restart mode upon power application prompted this AD. The actions specified by this AD are intended to prevent improper operation of this equipment, which could result in navigational errors.

DATES: Effective February 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE; Cedar Rapids, Iowa 52498. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4134; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Collins DME–700 distance measurement equipment installed on aircraft was published in the **Federal Register** on January 25, 1993 (58 FR 5949). The action proposed to require modifying these DME units to ensure that they are functioning properly. The proposed modifications would be accomplished in accordance with the following Collins service bulletins (SB) (1) SB 20, Revision 1, DME–700–34–20, dated August 30, 1991, which when incorporated prevents a condition known as "sleeping DME's"; and (2) Collins SB 24, DME–700–34–24, dated May 15, 1992; Collins SB 25, DME–700–34–25, dated November 11, 1992; and Collins SB 26, DME–700–34–26, dated October 21, 1992, as applicable, which when incorporated prevent a condition known as "deaf DME's".

Interested persons have been afforded an opportunity to participate in the making of this amendment. Based on the comments received, the proposal was changed to add a modification that went beyond the scope of that which was originally proposed.

Accordingly, the FAA issued a supplementary NPRM that incorporated minor revisions and added the additional modification. The proposed actions specified in the Supplemental NPRM would be accomplished in accordance with the following, as applicable:

Collins SB/condition	Date	Part Nos. applicable (622–4540–XXX)
SB 20, Revision 1/ Sleeping.	Aug. 30, 1991 ...	All applicable DME–700 Units, –020, –120, with serial number 1 through 4247.
SB 25/ Deaf and Distance Jumping.	Nov. 11, 1992 ...	All applicable DME–700 Units, converts –020, –021, or –022 to -023. SB 20 most be installed prior to or in conjunction with SB 25. SB 24 is incorporated by SB 25.
SB 26/ Deaf and Distance Jumping.	Oct. 21, 1992	All applicable DME–700 Units, converts –120, or –121, to –122. SB 20 most be installed prior to or in conjunction with SB 26. SB 26 eliminates the need for SB 21.

Interested persons were again afforded an opportunity to comment on the proposed action. Due consideration has been given to the five comments received.

Two commenters concur with the proposed rule as written.

Another commenter (Collins) states that there are two errors in the part numbers referenced in the proposed AD: (1) part number (P/N) 622–4540–022 was referenced as P/N 622–4540–22 in the Applicability section of the AD; and (2) in the chart in paragraph (c) of the proposed AD, the sentence that consists of the following words: "All applicable DME–700 Units, Converts –022, –021, or –022 to –023." should be changed to "All applicable DME–700 Units, Converts –020, –021, or –022 to –023." The FAA concurs and has changed the proposed AD accordingly.

One commenter reports that the Airbus Model A330 airplane is not yet certificated, and should not be included in the list of affected airplane models. The FAA concurs that this airplane is not certificated and has deleted it from the list of possible affected airplanes. However, the Applicability section of

the proposed AD is worded as "DME equipment that is installed on, but not limited to, the following model airplanes (all serial numbers), certificated in any category:". If this airplane would become certificated for operation with the Collins DME–700 equipment, then this action would apply to these airplanes.

Another commenter states that these DME units were never certificated on Boeing Model B757 airplanes, and should therefore be removed from the applicability of the proposed AD. The FAA concurs and has revised the proposed AD accordingly.

This same commenter suggests several minor editorial revisions and corrections to increase the understanding of the proposed AD. The FAA concurs that these changes would improve clarity and has revised the proposed AD accordingly.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes referenced above and minor editorial corrections. The FAA has determined that these changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The condition specified by the required action is not caused by actual hours time-in-service (TIS) of the airplane that the equipment is installed in. There is no correlation between improper operation of the equipment and the age or number of times the equipment is utilized. Based on this, the compliance time of this AD is presented in calendar time instead of hours TIS.

The FAA estimates that 518 DME–700 units installed on airplanes in the U.S. registry will be affected by this AD, that it will take approximately 7 workhours per unit to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts will be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $199,430. This cost figure is based on the assumption that none of the affected airplane owners/operators have accomplished the required action.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

94–02–02 Rockwell International/Collins Air Transport Division: Amendment 39–8799; Docket No. 92–CE–60–AD.

Applicability: DME–700 distance measuring equipment (all serial numbers) (part numbers 622–4540–020, 622- 4540–021, 622–4540–022, 622–4540–120, and 622–4540–121), that is installed on, but not limited to, the following model airplanes (all serial numbers), certificated in any category:

Manufacturer	Models
Boeing	B737, B747–400, and B767.
McDonnell Douglas.	MD 80, MD 11.
Airbus	A300, A310, A300–600, A320, and A340.
Fokker	F–100.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent improper operation of these DME units, which could result in navigational errors, accomplish the following:

(a) Ensure that Aeronautical Radio, Inc. (ARINC) 429 distance outputs are processed and updated by modifying the distance measuring equipment in accordance with the applicable service information presented in the chart in paragraph (c) of this AD.

(b) Ensure proper initialization and correct DME distance indication by modifying the distance measuring equipment in accordance with the applicable service information presented in the chart in paragraph (c) of this AD.

(c) Paragraphs (a) and (b) shall be accomplished in accordance with the Accomplishment Instructions section of the applicable service bulletins (SB) presented in the following chart:

Collins SB/condition	Date	Part Nos. applicable (622–4540–XXX)
SB 20, Revision 1/ Sleeping.	Aug. 30, 1991 ...	All applicable DME–700 Units, –020, –120, with serial number 1 through 4247.
SB 25/ Deaf, Sleeping, and Distance Jumping.	Nov. 11, 1992 ...	All applicable DME–700 Units, converts –020, –021, or –022 to –023. SB 20 must be installed prior to or in conjunction with SB 25. SB 24 is incorporated by SB 25.
SB 26/ Deaf, Sleeping, and Distance Jumping.	Oct. 21, 1992	All applicable DME–700 Units, converts –120 or –121 to –122. SB 20 must be installed prior to or in conjunction with SB 26. SB 26 eliminates the need for SB21.

Note 1: The sleeping DME modification referenced in SB 20 was incorporated at manufacture beginning with serial number 4248.

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

(e) An alternative method of compliance or adjustment of the compliance time that

provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The modifications required by this AD shall be done in accordance with Collins Service Bulletin 20, Revision 1, DME–700–34–20, dated August 30, 1991; Collins Service Bulletin 25, DME–600–34–25, dated November 11, 1992; and Collins Service Bulletin 26, DME–700–34–26, dated October 21, 1992, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE; Cedar Rapids, Iowa 52498. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–8799) becomes effective on February 21, 1994.

Issued in Kansas City, Missouri, on January 11, 1994.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–1088 Filed 1–14–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 1929]

Privacy Act of 1974; Access to Information

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations by exempting portions of a record system from certain provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a). Certain portions of the Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes (STATE–54) are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f).

EFFECTIVE DATE: January 18, 1994.

ADDRESSES: Director, Office of Freedom of Information, Privacy, and Classification Review; room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520–1239.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Chief, Privacy, Plans and Appeals Division, Office of Freedom of Information, Privacy, and Classification Review (address above); 202–647–6620.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** (58 FR 57974, October 28, 1993) inviting interested persons to submit comments concerning the proposed regulations. Since no comments were received, the amendment to the Privacy Provisions of the Department of State's Access to Information regulations was formally adopted.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Classified information, Confidential business information, Freedom of information, Privacy.

1. The authority citation for 22 CFR part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, as amended, 5 U.S.C. 552a; the Administrative Procedure Act, 5 U.S.C. 551, et seq.; the Ethics in Government Act, 5 U.S.C. App. 201; Executive Order 12356, 47 FR 14874; and Executive Order 12600, 52 FR 23781.

§ 171.32 [Amended]

In § 171.32, paragraph (j)(1) is amended by adding "Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes. STATE–54", after "Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53".

Dated: January 4, 1994.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

[FR Doc. 94–981 Filed 1–14–94; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 70

[T.D. ATF–353; CRT–92–07]

RIN 1512–AB26

Delegation of Authority To Accept Checks and Waive Penalties

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: Authority delegation. This Treasury decision expands the responsibilities of the "Chief, Tax Processing Center" by giving the chief the authority to accept checks and waive penalties. It also removes certain regulations dealing with tax collection activities under 27 CFR part 70 that have been determined to be outside of the authority of the Bureau of Alcohol, Tobacco and Firearms.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Bryce, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8220).

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1972, the Bureau of Alcohol, Tobacco and Firearms (ATF) was established by Treasury Department Order No. 120–01 (formerly Order No. 221). This Order transferred from the Internal Revenue Service (IRS) to the newly-formed Bureau the functions, powers and duties relating to alcohol, tobacco, firearms and explosives laws. The Order specifically stated that "all existing activities relating to the collection, processing, depositing, or accounting for taxes * * * shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division * * * until the Director shall otherwise provide with the approval of the Secretary." ATF assumed responsibility for the collection of taxes imposed by subtitle E of the Internal Revenue Code in July 1987, by means of Treasury Decision (T.D.) ATF–251, and adopted provisions in 27 CFR part 70 similar to those found in 26 CFR part 301 which concerned the deposit and assessment of taxes. The remaining collection functions with respect to taxes administered by ATF were transferred by way of T.D. ATF–301, at which time ATF adopted regulations similar to those used by IRS relating to the examination, assessment, and collection functions. These provisions are also found in 27 CFR part 70. Under existing regulations, the regional directors (compliance) are authorized to accept checks and waive penalties associated with the collection of taxes administered by ATF. This final rule amends 27 CFR part 70 by vesting the authority to accept checks and waive penalties with the Chief, Tax Processing Center, in addition to the regional directors (compliance), in order to ease the burden on the regional directors (compliance), simplify the waiver process for taxpayers, and permit the

more efficient functioning of ATF's tax collection activities.

This final rule also removes the following regulations dealing with tax collection activities that have been determined to fall outside of ATF's authority: 27 CFR 70.166(a), 70.201, 70.211, 70.212 and 70.487.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action, because (1) it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule is a rule of agency management that merely transfers the authority relating to the acceptance of checks and waiver of penalties, it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(a)(2) and (b)(B) or subject to the effective date limitation in 5 U.S.C. 553(d)(3).

Drafting Information

The principal author of this document is Nancy M. Bryce, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 70—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§§ 70.61, 70.77, 70.96, and 70.97 [Amended]

Par. 2. §§ 70.61, 70.77, 70.96, 70.97. In Part 70 remove the words "regional director(s) (compliance)" and replace it with "regional director(s) (compliance) or the Chief, Tax Processing Center" in the following places:

(a) Section 70.61(a)(1)(i), (a)(1)(i)(D), (a)(3);

(b) Section 70.77(b)(1), (b)(2);

(c) Section 70.96(a)(1)(iv), (a)(2), (a)(3);

(d) Section 70.97(c)(2).

Par. 3. The first sentence of § 70.74(b) is revised to read as follows:

§ 70.74 Request for prompt assessment.

* * * * *

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the regional director (compliance) of the region in which the taxpayer is located or with the Chief, Tax Processing Center. * * *

* * * * *

Par. 4. Section 70.96 is amended by revising the first sentence of paragraph (a)(1), the first sentence of paragraph (a)(2), the first sentence of paragraph (a)(3) and the second and fourth sentences of paragraph (c) to read as follows:

§ 70.96 Failure to file tax return or to pay tax.

(a) *Addition to the tax.* (1) *Failure to file tax return.* In the case of failure to file a return required under authority of:

(i) Title 26 U.S.C. 61, relating to returns and records;

(ii) Title 26 U.S.C. 51, relating to distilled spirits, wines and beer;

(iii) Title 26 U.S.C. 52, relating to tobacco products, and cigarette papers and tubes; or

(iv) Title 26 U.S.C. 53, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the regional director (compliance) or Chief, Tax Processing Center to be due to reasonable cause and not to willful neglect. * * *

(a)(2) *Failure to pay tax shown on return.* In case of failure to pay the amount shown as tax on any return required to be filed after December 31, 1969 (without regard to any extension of time for filing thereof), specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) or the Chief, Tax Processing Center to be due to reasonable cause and not to willful neglect. * * *

(a)(3) *Failure to pay tax not shown on return.* In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to 26 U.S.C. 6213(b)) within 10 days from the date of the notice and demand therefor, there shall be added to the amount shown in the notice and demand the amount specified below unless the failure to pay

the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) or the Chief, Tax Processing Center to be due to reasonable cause and not to willful neglect. * * *

* * * * *

(c) * * * Such statement should be filed with the regional director (compliance) of the region in which the taxpayer is located or with the Chief, Tax Processing Center. * * * If the regional director (compliance) or Chief, Tax Processing Center determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. * * *

* * * * *

Par. 5. Section 70.98(b) is amended by revising the second and third sentences to read as follows:

§ 70.98 Penalty for underpayment of deposits.

* * * * *

(b) * * * The statement must be filed with the regional director (compliance) of the region in which the taxpayer is located or with the Chief, Tax Processing Center. If the regional director (compliance) or the Chief, Tax Processing Center determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

§§ 70.99, 70.166, 70.201, 70.211, 70.212, and 70.487 [Removed]

Par. 6. Section 70.99 is removed.
Par. 7. Section 70.166 is removed.
Par. 8. Section 70.201 is removed.
Par. 9. Section 70.211 is removed.
Par. 10. Section 70.212 is removed.
Par. 11. Section 70.487 is removed.

Signed: December 3, 1993.

Daniel R. Black,

Acting Director.

Approved: December 27, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–1090 Filed 1–14–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE11

Schedule for Rating Disabilities; Genitourinary System Disabilities

AGENCY: Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended its Schedule for Rating Disabilities of the Genitourinary System. This amendment is based on a General Accounting Office (GAO) study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that such a review be conducted. The effect of this action is to update the genitourinary portion of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

DATES: This amendment is effective February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, 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: In December 1988, the General Accounting Office (GAO) recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. As part of the process to implement these recommendations, VA published a proposal to amend 38 CFR 4.115 and 4.115a in the **Federal Register** of December 2, 1991 (56 FR 61216–20). Interested persons were invited to submit written comments, suggestions or objections on or before January 2, 1992. We received comments from the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, and VA employees.

We have made a number of editorial changes, primarily of syntax and punctuation, throughout the final rule. These changes are intended to clarify the rating criteria and represent no substantive amendment. Generic terms such as "severe," "moderate," and "mild," which preceded various evaluation criteria in the proposed regulations, have been removed. Rather than helping to explain or clarify the specific evaluation criteria which they precede, these terms inject an element of ambiguity not otherwise present. Under diagnostic code 7524, we have deleted the phrase "other than undescended or congenitally undeveloped" for the noncompensable evaluation criteria since the NOTE following adequately explains that an undescended or congenitally undeveloped testis is not ratable.

We proposed that § 4.115 be amended to allow separate evaluation of coexisting "heart disease" in the event of an absent kidney, or when chronic renal disease has progressed to the point where regular dialysis is required. One commenter pointed out that in addition to heart disease, hypertension is often manifested in cases of renal disease, but that the proposed regulatory language would preclude a separate evaluation for hypertension. He suggested that we substitute the term "cardiovascular disease" for "heart disease." Although we agree that this provision should apply to hypertension as well as heart disease, we believe that the term "cardiovascular" is too broad since it might be interpreted to include cardiovascular conditions unrelated to renal dysfunction. We have therefore amended § 4.115 to specify that coexisting heart disease or hypertension may be separately evaluated in the absence of one kidney or when the claimant requires dialysis.

Our proposed rating formula for renal dysfunction under § 4.115a included a requirement at the 100 percent level for blood urea nitrogen (BUN) and creatinine thresholds of more than 100mg% and 10mg%, respectively. One commenter felt that the proposed requirements are too high and suggested that 80mg% and 8mg% would be more appropriate. Upon further review, we have concluded that measurements over 80/8mg% suggest a need for dialysis and would therefore be a more appropriate threshold. We have accordingly amended the criteria for a 100 percent evaluation in § 4.115a. In keeping with that change, we have also amended the ranges of BUN and creatinine readings required for an 80 percent evaluation to 40–80mg% and 4–8mg%, respectively.

Two commenters felt that the word "invalidism" in the proposed criteria for the 100 and 80 percent levels for renal dysfunction is inappropriate because it is archaic, too subjective, and in fact suggests a level of severity more consistent with entitlement to special monthly compensation. VA agrees, and has substituted the phrase "precluding more than sedentary activity" for the 100 percent evaluation, and the phrase "generalized poor health characterized by * * *" for the 80 percent evaluation.

Under the 60 percent evaluation level for renal dysfunction, we had proposed that qualifying manifestations of hypertension be referred to as "moderate hypertension" whereas under the 30 percent level we had proposed that hypertension be "minimally compensable under diagnostic code 7101." One commenter

recommended that hypertension be described consistently in terms of diagnostic code 7101 throughout the criteria for renal dysfunction. We agree. Such a change would promote not only a clearer understanding of the rule, but internal consistency within the rating schedule as well. We have therefore modified the criteria for a 60 percent evaluation to require hypertension at least 40 percent disabling under diagnostic code 7101, for a 30 percent evaluation to require hypertension at least 10 percent disabling under diagnostic code 7101, and the zero percent evaluation to include hypertension non-compensable under diagnostic code 7101.

One commenter felt that either albumin and casts with a history of acute nephritis or renal dysfunction with mild hypertension warrants a 10 percent evaluation rather than the zero percent we had proposed under the criteria for renal dysfunction. We do not concur. Albuminuria and granular casts are clinical findings which may or may not indicate active kidney disease, but which themselves are not inherently disabling. Since the level of compensation is determined primarily by the extent to which a condition is disabling, and since an asymptomatic condition, or combination of asymptomatic conditions, imposing no discernible industrial impairment does not warrant a compensable evaluation, we find no reason to assign these conditions a compensable evaluation in the absence of chronic kidney disease or hypertension which is compensable under diagnostic code 7101.

Two commenters questioned the reduction of the evaluation for loss of a single kidney from 30 percent to zero percent disabling. Although long-term renal function returns to near normal due to hypertrophy of the remaining kidney, the significant anatomical alteration caused by removal of a kidney, the resulting surgical scar, and the precautions which must be taken to protect the remaining kidney, could reasonably be expected to prevent a veteran from engaging in certain, but by no means all, occupations. Upon further reconsideration, we have therefore elected to retain the minimum 30 percent evaluation for loss of a single kidney under diagnostic code 7500.

One commenter felt that the proposed criteria for rating voiding dysfunction under § 4.115a would be inadequate for evaluating veterans with neurogenic bladders who use either indwelling or intermittent catheterization to void, and suggested a separate diagnostic code for neurogenic bladder. Although a need for separate rating criteria was implied, the commenter offered no alternative criteria for our consideration.

VA agrees that it would be useful to have a separate diagnostic code for this disability, which is common in cases of severe spinal cord injury. We have therefore added diagnostic code 7542 for neurogenic bladder with instructions to rate the condition under the criteria for voiding dysfunction, which we believe are adequate to evaluate neurogenic bladder. Neurogenic bladder is manifested as urine leakage or frequent urination, both of which correspond to categories of voiding dysfunction as proposed. In addition, the word "appliance" as used in the criteria for incontinence clearly includes all types of catheters as well as any other assistive device for urination.

Under the general rating criteria for urinary frequency in § 4.115a, we had proposed separate sets of evaluation criteria for daytime and nighttime frequency. The criteria for daytime frequency were assigned evaluations of 40, 20, and 10 percent. For nighttime frequency, awakening to void five or more times per night was proposed as 20 percent, awakening to void three to four times was assigned 10 percent, and one to two times was non-compensable. One commenter felt that the evaluations for nighttime frequency should be higher than proposed, while another believed that the distinction between daytime and nighttime frequency is artificial and should be eliminated.

Separate criteria for nighttime frequency were proposed since a patient may be more likely to report this symptom to an examining physician, especially in the early stages of renal disease. Upon further review, however, VA agrees that nighttime frequency is just as indicative of significant disease as daytime frequency, and that different evaluation levels are not warranted. We have therefore incorporated the three levels originally proposed for nighttime frequency with the 40, 20, and 10 percent levels under daytime frequency. Instances in which a person is awakened to void only once a night, however, have not been made compensable, since this degree of frequency does not, in our judgment, impose a disability significant enough to warrant the payment of compensation.

One commenter felt that the frequency of the need to change absorbent materials under the criteria for rating voiding dysfunction is not a useful measure of incontinence because: (1) The changing of absorbent materials does not accurately quantify the degree of disability, (2) the wearing of absorbent materials may be inappropriate for paraplegics, and (3) there is no objective method to determine the frequency of the need to change absorbent materials.

We do not concur. A person who needs to change absorbent materials often has a greater loss of voluntary control than one who needs changes less frequently. The frequency of changes can be objectively reported either by the veteran or the person providing care, with the frequency of the need for such changes determined by an examining physician. These criteria represent, in our judgment, a satisfactory means to measure urinary incontinence and, since no reasonable alternative has been suggested, we have elected to retain them. For some persons, wearing absorbent materials may be inappropriate; such people require the use of a catheter or some other means to compensate for the loss of control. As previously discussed, the criteria at the 60 percent level addressing the use of such an appliance are adequate to evaluate the disabilities of those for whom the use of absorbent materials is inappropriate.

One commenter remarked that the words "increased to the next higher" were unclear in the instruction for arteriolar nephrosclerosis following diagnostic code 7507. We agree that this language, which was retained from the prior rating schedule, is ambiguous. The intended effect is to recognize that heart disease or hypertension is more serious when the claimant also has renal disabilities. We have amended the instruction following diagnostic code 7507 to clarify this principle.

Under the diagnostic codes for nephrolithiasis (7508), ureterolithiasis (7510), and stricture of the ureter (7511), a 30 percent evaluation was proposed for recurrent stone formation requiring diet therapy, drug therapy, or frequent surgical therapy. One commenter believed a higher evaluation should be assigned for "frequent surgical therapy," since frequent surgery implies a condition more severe than one controlled through diet or drug therapy. By "surgical therapy" we meant to include extraction through a catheter or fragmentation through such means as extracorporeal shock wave lithotripsy. To remove any ambiguity and thus avoid confusion, we have amended the criteria under diagnostic codes 7508, 7510, and 7511 to refer to "invasive or non-invasive procedures" rather than "surgical therapy," and we have replaced the term "frequent" with the more objective measurement of more than twice per year.

One commenter stated that the words "multiple urethroperineal" in the evaluation criteria for fistula of the

urethra (7519) were unclear. Once again, we agree that a term retained from the prior rating schedule is vague and potentially confusing. We have added the word "fistulae" to indicate that when there are two or more fistulous tracts draining from the perineum a 100 percent evaluation will be assigned.

Under diagnostic code 7531 (kidney transplants), we originally proposed that a follow-up examination be conducted six months after surgery in the same manner as for malignancies (diagnostic code 7528). Diagnostic code 7531 previously required assignment of a 100 percent evaluation with a prospective reduction two years after surgery. Three commenters stated that a period longer than six months is warranted because of the fragile condition of these patients, the complications of surgery, the side-effects of immunosuppressive therapy, and the risk of transplant rejection. One commenter suggested that a one year period would be reasonable.

Considering the possibility of late immunologic, medical, and surgical complications, we believe it is more reasonable to assess residual disability one year after surgery instead of six months. We have therefore amended the NOTE following diagnostic code 7531 to state that a mandatory VA examination will be conducted one year after hospital discharge instead of the six months originally proposed.

A minimum rating of 30 percent was proposed under the diagnostic code for kidney transplant for as long as a patient is on immunosuppressive medication. One commenter stated that almost all persons who have undergone transplant surgery permanently require immunosuppressive medication. Upon further review, VA agrees that it is so seldom that immunosuppressive therapy can be stopped after transplantation, that the proposed exception to the minimum evaluation under diagnostic code 7531 is not necessary. We have deleted that exception from the final rule.

One commenter believed that there should be an evaluation level of 30 percent in addition to the 20 percent level proposed under diagnostic code 7532, Renal tubular dysfunctions, since various renal tubular nephropathies may have severe disabling effects. Another commenter suggested that the category of renal tubular dysfunctions was too vague and seemed to embrace a variety of conditions which should be singly listed, and that they often render veterans unemployable due to the combination of treatment and symptoms.

Renal tubular disorders include disorders of the proximal nephron function, disorders of function of the ascending limb of the loop of Henle, and disorders of distal nephron function. We have amended the parenthetical portion of the heading of diagnostic code 7532 to include additional examples of these diseases, which have common characteristics and should therefore be rated under the same criteria to ensure consistency. These conditions generally cause metabolic imbalances which can be adequately treated by replacement therapy; as such, in our judgment, they do not warrant an evaluation greater than 20 percent. They may on occasion, however, result in more severe kidney dysfunction. For that reason we have added an instruction to alternatively rate this disability as renal dysfunction, which will allow evaluations greater than 20 percent.

One commenter stated that in keeping with "current BVA [Board of Veterans Appeals] policy," the diagnostic code for penile deformity with loss of erectile power (7522) should provide a 20 percent evaluation even when erectile power has been restored by means of a penile implant.

VA does not concur. Under diagnostic code 7522, two distinct elements are required for a 20 percent evaluation: (1) Penile deformity and (2) loss of erectile power. If either element is absent following insertion of a penile implant or for any other reason the criteria for a 20 percent evaluation under this code are not met, and the instruction which the commenter requests is therefore not warranted. VA regulations are binding upon all agencies within the Department of Veterans Affairs, and neither BVA nor any other VA agency is free to adopt an official policy which is contrary to established regulations.

The same commenter also requested that we add a NOTE to diagnostic code 7522 indicating entitlement to special monthly compensation under 38 U.S.C. 1114(k).

Although loss of erectile power establishes entitlement to special monthly compensation under 38 U.S.C. 1114(k), we do not believe that a NOTE to such effect in the rating schedule is warranted. The criteria regarding entitlement to special monthly compensation are extensive, very complicated, and seldom correspond exactly to evaluation criteria in the rating schedule. For that reason, it is important that raters refer to the regulations governing special monthly compensation rather than relying on cross-references in the rating schedule.

One commenter objected to the proposed elimination of a compensable evaluation for loss of a single testicle under diagnostic code 7524, alleging that such loss disrupts normal endocrine function and interferes with the maintenance of secondary sex characteristics. VA does not concur. In fact, any retrogressive changes in secondary sex characteristics even following removal of both testes after sexual maturity would occur slowly, if at all (Oswald S. Lowsley and T.J. Kirwin, "Clinical Urology" 230 (Williams and Wilkins 1956)). A solitary testis is in most cases adequate to sustain normal endocrine function without hormone replacement therapy. No significant employment handicap would likely result from this condition and a compensable evaluation, in our judgment, is not warranted.

The same commenter objected to the proposed elimination of the minimum rating of 20 percent for removal of the prostate gland (diagnostic code 7526). VA does not concur. Because of the development of improved surgical techniques for extraction of the prostate through the perineum, bladder, surrounding capsule, or urethra, a minimum disability evaluation of 20 percent is not warranted. Often the only residual of this surgery is sterility, which is compensated not under the rating schedule but by means of special monthly compensation under 38 U.S.C. 1114(k). Should any other disability result, it would be rated under the diagnostic code for injuries, infections, hypertrophy, and postoperative residuals of the prostate gland (7527), with evaluations based on the criteria for voiding dysfunction or urinary tract infections. In our judgment, this provision allows for a broad enough range of evaluations to rate residual disability as established by medical examination.

Three commenters urged that the previous convalescent period of one year following cancer treatment (diagnostic code 7528) be retained, stating that the complexity of certain medical procedures, the wide variety of possible side-effects, and the time required to recover from treatment precludes any realistic reduction of these recuperative periods.

The commenters appear to have misinterpreted the proposed rule to mean that a convalescent evaluation will terminate after six months. The rule actually requires an examination, not a reduction, six months after the assignment of total benefits. If the claimant remains totally disabled, the 100 percent evaluation will continue without interruption. If a reduction in evaluation is warranted, it will be implemented under the provisions of 38 CFR 3.105(e).

This application of total convalescence evaluations will take into account the wide array of possible side-effects and complications of treatment by ensuring that any changes in evaluation are supported by the specific findings of a current medical examination. A total evaluation will extend indefinitely after treatment is discontinued, with a required VA examination six months thereafter. If the results of this or any subsequent examination warrant a reduction in evaluation, the reduction will be implemented under the provisions of 38 CFR 3.105(e). There can be no reduction at the end of six months since any proposed reduction would be based on the examination and the notification process can begin only after the examination is reviewed. This method also has the advantage of offering the veteran more contemporary notice of any proposed action and, under the provisions of 38 CFR 3.105(e), expanding the opportunity to present evidence showing that the proposed action should not be taken. We have revised the wording of the NOTE based upon the concerns of the commenters, however, to ensure that it cannot be misinterpreted as requiring a reduction six months after treatment is terminated.

Several commenters objected to the elimination of a minimum 10 percent evaluation following treatment of cancer under diagnostic code 7528. One commenter stated that malignancies of this kind result in a "permanent mental fixation." Another commenter stated that there may be residual damage to the genitourinary system from radiation treatment.

VA acknowledges that disability often follows cancer treatment, and residual impairment of the genitourinary system will accordingly be rated as either voiding or renal dysfunction. Although any residual warranting compensation would be ascertainable on VA examination, the existence of such residuals cannot be presumed in every case. Psychiatric or any other complications are subject to service connection under 38 CFR 3.310(a) of this chapter. The recurrence of cancer at any time would warrant restoration of the 100 percent evaluation. Rating the actual residuals will in our judgment allow assignment of an evaluation reflecting the true severity of the individual disability.

One commenter stated that because the proposed amendments included reductions in certain percentage evaluations, VA was exceeding the GAO mandate to review the rating schedule for the purpose of updating medical terminology and evaluation criteria.

VA does not concur. VA's mandate to review the rating schedule derives from the statutory authority which Congress has granted the Secretary of Veterans Affairs to adopt a schedule of ratings, including the authority to establish percentage evaluations (38 U.S.C. 1155). Although GAO may recommend that the Secretary review the schedule from a particular perspective, it has no authority to limit the scope of any review which the Secretary subsequently conducts under that statutory authority. The GAO recommendations resulted from a study finding that the rating schedule uses outdated medical terminology, contains ambiguous rating criteria, and does not reflect recent medical advances. If it is to conduct a good faith review, particularly when considering medical advances, VA cannot preclude the possibility that some evaluations may be changed. Congress, in fact, specifically foresaw such a possibility when it enacted legislation to amend 38 U.S.C. 1155 in order to protect the level of evaluations assigned under superseded rating criteria. (See 137 Cong. Rec. H5928 (daily ed. July 29, 1991) (statement of Rep. Montgomery).)

One commenter implied that the proposed changes could not be made without statistical studies showing the economic impact of genitourinary impairments on disabled individuals. He cited a statistical study conducted in the 1960s which he contends does not support the proposed reductions.

The statute authorizing establishment of the schedule directs that "[t]he Secretary shall from time to time readjust the schedule of ratings *in accordance with experience*" (emphasis supplied). Rather than requiring statistical studies or any other specific type of data, the statute clearly leaves the nature of the experience which warrants an adjustment, and by extension the manner in which any review is conducted, to the discretion of the Secretary. Although during the 1970s VA considered adjusting the rating schedule based on the same statistical studies cited by the commenter, that approach proved to be unsatisfactory and the proposed changes were not adopted.

To allow as much public participation in the process as possible, we published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on August 21, 1989 (54 FR 34531–2). We received responses from VA employees, the Naval Physical Evaluation Board, the Veterans of Foreign Wars, the Disabled American Veterans, the Director of Urology Programs at the National Institutes of Health, and the general public. We also contracted with an outside consultant to suggest revisions. In formulating recommendations, the consultant convened a five-member panel of physicians, each specializing in a different aspect of urology. We developed our proposed changes only after reviewing all of the material received in response to the ANPRM, from the consultant, and from specialists from the Veterans Health Administration in renal diseases.

One commenter believed that the proposed changes did not reflect the average person's ability to cope with genitourinary disorders as 38 U.S.C. 1155 requires, but were instead based upon optimum success in overcoming the effects of disease and the results of surgery. Presumably the commenter was referring to the convalescent periods specified under various diagnostic codes in this portion of the schedule.

VA does not concur. 38 U.S.C. 1155 directs that "ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations." The word "average," as used in the statute, refers to the "usual or normal kind, amount, quality, rate, etc." ("Webster's New World Dictionary," Third College Edition). We have outlined above the range of medical advice available to us when we conducted this review. The convalescent periods adopted in this change represent in our judgment, based on sound medical advice, neither the longest nor shortest periods that any individual patient might require for recovery, but the usual or normal periods during which a normal patient, under normal circumstances, would be expected to recover from a specific condition or surgical procedure. We also note that these convalescent periods represent the point at which the individual patient's condition is to be evaluated by examination, and do not preclude an extension of a total evaluation if appropriate based on the individual patient's condition. (See comments regarding diagnostic code 7528.)

Another commenter believed that certain changes were proposed "with an eye towards cost cutting." As discussed above, the revisions were proposed based on medical considerations; no cost studies or projections were conducted in conjunction with this review. Cost cutting therefore was not an issue, and we believe that these revisions will prove to have negligible budget impact.

One commenter stated that VA should consider the effects of genitourinary

conditions on life expectancy when revising this portion of the rating schedule.

VA does not concur. To consider a factor so far removed from "the average impairments of earning capacity" as the effects of various conditions on life expectancy would clearly exceed the parameters established by Congress in 38 U.S.C. 1155.

One commenter contended that it would be unfair for VA to reduce any of the evaluations in the current rating schedule because doing so could prevent some veterans from maintaining their current levels of evaluation and thereby deprive them of the protection which would otherwise attach to those evaluation levels after 20 years under the provisions of 38 U.S.C. 110.

VA does not concur. In section 103(a) of the Veterans' Benefits Programs Improvement Act of 1991 (Pub. L. 102–86), Congress modified 38 U.S.C. 1155 to provide that a readjustment to the rating schedule will not result in a reduction of any disability evaluation in effect on the date of the readjustment unless that disability has actually improved. The statute effectively protects against the situation which the commenter anticipates. Since no evaluation may be reduced solely due to a readjustment to the rating schedule, a readjustment cannot compromise the potential for any veteran to have an evaluation preserved under the provisions of 38 U.S.C. 110.

One commenter suggested that VA allow special monthly compensation at the level for aid and attendance whenever a veteran requires hemodialysis three or more times a week. Another commenter suggested that we allow special monthly compensation under 38 U.S.C. 1114 (k) for loss of a single kidney.

VA does not concur. The entitlement criteria for special monthly compensation are established by Congress and codified at 38 U.S.C. 1114 (k) through (s). Regulations implementing these statutory grants of special monthly compensation are found in VA's Adjudication regulations (38 CFR part 3) rather than in the Schedule for Rating Disabilities (38 CFR part 4). This issue is therefore beyond the scope of the current rulemaking.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

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, 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 impact 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 numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: March 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Editorial note: This document was received at the Office of the Federal Register on January 11, 1994.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. Section 4.115 is amended by adding two sentences at the end of the section to read as follows:

§ 4.115 Nephritis.

* * * If, however, absence of a kidney is the sole renal disability, even if removal was required because of nephritis, the absent kidney and any hypertension or heart disease will be separately rated. Also, in the event that chronic renal disease has progressed to the point where regular dialysis is required, any coexisting hypertension or heart disease will be separately rated.

3. Section 4.115a is redesignated and revised as § 4.115b and a new § 4.115a is added to read as follows:

§ 4.115a Ratings of the genitourinary system—dysfunctions.

Diseases of the genitourinary system generally result in disabilities related to renal or voiding dysfunctions, infections, or a combination of these. The following section provides descriptions of various levels of disability in each of these symptom areas. Where diagnostic codes refer the decisionmaker to these specific areas dysfunction, only the predominant area of dysfunction shall be considered for rating purposes. Since the areas of dysfunction described below do not cover all symptoms resulting from genitourinary diseases, specific diagnoses may include a description of symptoms assigned to that diagnosis.

	Rating
Renal dysfunction:	
Requiring regular dialysis, or precluding more than sedentary activity from one of the following: persistent edema and albuminuria; or, BUN more than 80mg%; or, creatinine more than 8mg%; or, markedly decreased function of kidney or other organ systems, estpecially cardiovascular	100
Persistent edema and albuminuria with BUN 40 to 80mg%; or, creatinine 4 to 8mg%; or, generalized poor health characterized by lethargy, weakness, anorexia, weight loss, or limitation of exertion	80
Constant albuminuria with some edema; or, definite decrease in kidney function; or, hypertension at least 40 percent disabling under diagnostic code 7101	60
Albumin constant or recurring with hyaline and granular casts or red blood cells; or, transient or slight edema or hypertension at least 10 percent disabling under diagnostic code 7101	30
Albumin and casts with history of acute nephritis; or, hypertension non-compensable under diagnostic code 7101	0
Voiding dysfunction:	
Rate particular condition as urine leakage, frequency, or obstructed voiding	
Continual Urine Leakage, Post Surgical Urinary Diversion, Urinary Incontinence, or Stress Incontinence:	
Requiring the use of an appliance or the wearing of absorbent materials which must be changed more than 4 times per day	60
Requiring the wearing of absorbent materials which must be changed 2 to 4 times per day	40
Requiring the wearing of absorbent materials which must be changed less than 2 times per day	20

	Rating
Urinary frequency:	
Daytime voiding interval less than one hour, or; awakening to void five or more times per night	40
Daytime voiding interval between one and two hours, or; awakening to void three to four times per night	20
Daytime voiding interval between two and three hours, or; awakening to void two times per night	10
Obstructed voiding:	
Urinary retention requiring intermittent or continuous characterization	30
Marked obstructive symptomatology (hesitancy, slow or weak stream, decreased force of stream) with any one or combination of the following:	
1. Post void residuals greater than 150 cc.	
2. Uroflowmetry; markedly diminished peak flow rate (less than 10 cc/sec).	
3. Recurrent urinary tract infections secondary to obstruction.	
4. Stricture disease requiring periodic dilatation every 2 to 3 months	10
Obstructive symptomatology with or without stricture disease requiring dilatation 1 to 2 times per year	0
Urinary tract infection:	
Poor renal function: Rate as renal dysfunction.	
Recurrent symptomatic infection requiring drainage/frequent hospitalization (greater than two times/year), and/or requiring continuous intensive management	30
Long-term drug therapy, 1–2 hospitalizations per year and/or requiring intermittent intensive management	10

§ 4.115b Ratings of the genitourinary system—diagnoses.

	Rating
7500 Kidney, removal of one:	
Minimum evaluation	30
Or rate as renal dysfunction if there is nephritis, infection, or pathology of the other.	
7501 Kidney, abscess of:	
Rate as urinary tract infection	30
7502 Nephritis, chronic:	
Rate as renal dysfunction.	
7504 Pyelonephritis, chronic:	
Rate as renal dysfunction or urinary tract infection, whichever is predominant.	
7505 Kidney, tuberculosis of:	
Rate in accordance with §§ 4.88b or 4.89, whichever is appropriate.	
7507 Nephrosclerosis, arteriolar:	
Rate according to predominant symptoms as renal dysfunction, hypertension or heart disease. If rated under the cardiovascular schedule, however, the percentage rating which would otherwise be assigned will be elevated to the next higher evaluation.	
7508 Nephrolithiasis:	
Rate as hydronephrosis, *except for* recurrent stone formation requiring one or more of the following:	
1. diet therapy	
2. drug therapy	
3. invasive or non-invasive procedures more than two times/year	30
7509 Hydronephrosis:	
Severe; Rate as renal dysfunction.	
Frequent attacks of colic with infection (pyonephrosis), kidney function impaired	30
Frequent attacks of colic, requiring catheter drainage	20
Only an occasional attack of colic, not infected and not requiring catheter drainage	10
7510 Ureterolithiasis:	
Rate as hydronephrosis, *except for* recurrent stone formation requiring one or more of the following:	
1. diet therapy	
2. drug therapy	
3. invasive or non-invasive procedures more than two times/year	30
7511 Ureter, stricture of:	
Rate as hydronephrosis, *except for* recurrent stone formation requiring one or more of the following:	
1. diet therapy	
2. drug therapy	
3. invasive or non-invasive procedures more than two times/year	30
7512 Cystitis, chronic, includes interstitial and all etiologies, infectious and non-infectious:	
Rate as voiding dysfunction.	
7515 Bladder, calculus in, with symptoms interfering with function:	
Rate as voiding dysfunction	
7516 Bladder, fistula of:	
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.	
Postoperative, superapubic cystotomy	100
7517 Bladder, injury of:	
Rate as voiding dysfunction.	
7518 Urethra, stricture of:	
Rate as voiding dysfunction.	
7519 Urethra, fistual of:	
Rate as voiding dysfunction.	
Multiple urethroperineal fistulae	100
7520 Penis, removal of half or more	30
Or rate as voiding dysfunction.	
7521 Penis removal of glans	20
Or rate as voiding dysfunction.	
7522 Penis, deformity, with loss of erectile power	20
7523 Testis, atrophy complete:	
Both	20
One	0
7524 Testis, removal:	
Both	30
One	0
Note—In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an descended or congenitally undeveloped testis, with the absence or nonfunctioning of the other testis unrelated to service, an evaluation of 30 percent will be assigned for the service-connected testicular loss. Testis, undescended, or congenitally undeveloped is not a ratable disability.	
7525 Epididymo-orchitis, chronic only:	
Rate as urinary tract infection.	
For tubercular infections: Rate in accordance with §§ 4.88b or 4.89, whichever is appropriate.	
7527 Prostate gland injuries, infections, hypertrophy, postoperative residuals:	
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.	
7528 Malignant neoplasms of the genitourinary system	100

	Rating
Note—Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local reoccurrence or metastasis, rate on residuals as voiding dysfunction or renal dysfunction, whichever is predominant.	
7529 Benign neoplasms of the genitourinary system:	
Rate as voiding dysfunction or renal dysfunction, whichever is predominant.	
7530 Chronic renal disease requiring regular dialysis:	
Rate as renal dysfunction.	
7531 Kidney transplant:	
Following transplant surgery ...	100
Thereafter: Rate on residuals as renal dysfunction, minimum rating	30
Note—The 100 percent evaluation shall be assigned as of the date of hospital admission for transplant surgery and shall continue with a mandatory VA examination one year following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.	
7532 Renal tubular disorders (such as renal glycosurias, aminoacidurias, renal tubular acidosis, Fanconi's syndrome, Bartter's syndrome, related disorders of Henle's loop and proximal or distal nephron function, etc.):	
Minimum rating for symptomatic condition	20
Or rate as renal dysfunction.	
7533 Cystic diseases of the kidneys (polycystic disease, uremic medullary cystic disease, Medullary sponge kidney, and similar conditions):	
Rate as renal dysfunction.	
7534 Atherosclerotic renal disease (renal artery stenosis or atheroembolic renal disease):	
Rate as renal dysfunction.	
7535 Toxic nephropathy (antibotics, radiocontrast agents, nonsteroidal anti-inflammatory agents, heavy metals, and similar agents):	
Rate as renal dysfunction.	
7536 Glomerulonephritis:	
Rate as renal dysfunction.	
7537 Interstitial nephritis:	
Rate as renal dysfunction.	
7538 Papillary necrosis:	
Rate as renal dysfunction.	
7539 Renal amyloid disease:	
Rate as renal dysfunction.	
7540 Disseminated intravascular coagulation with renal cortical necrosis:	
Rate as renal dysfunction.	
7541 Renal involvement in diabetes mellitus, sickle cell anemia, systemic lupus erythematosus, vasculitis, or other systemic disease processes.	
Rate as renal dysfunction.	
7542 Neurogenic bladder:	
Rate as voiding dysfunction.	

[FR Doc. 94–1045 Filed 1–14–94; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 4

RIN 2900–AF41

Schedule for Rating Disabilities; Dental and Oral Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended that portion of its Schedule for Rating Disabilities which deals with dental and oral conditions. This amendment is based on a General Accounting Office study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that such a review be conducted. The effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

DATES: This amendment is effective February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, 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: In December 1988, the General Accounting Office recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. As part of the process to implement these recommendations, VA published a proposal to amend 38 CFR 4.150 in the **Federal Register** of January 19, 1993 (58 FR 4961–2). Interested persons were invited to submit written comments, suggestions or objections on or before March 22, 1993. We received one comment from the Veterans of Foreign Wars.

For limited motion of the temporomandibular joint under diagnostic code 9905, we proposed evaluation criteria containing precise ranges of limited inter-incisal motion and lateral excursion. For a 10 percent evaluation under limited inter-incisal movement, we proposed a range of 31 to 40 millimeters. The commenter suggested that we replace this criterion with the phrase "any limitation of motion interfering with mastication or speech," which was essentially the same requirement for a 10 percent evaluation under diagnostic code 9905 in the 1945 Rating Schedule.

We do not concur with the suggested change. One of our goals in reviewing the rating schedule is to eliminate ambiguous rating criteria. One means of accomplishing this is to make the criteria as objective as possible. Inter-incisal measurements are a commonly accepted standard for objectively assessing movement of the temporomandibular joint, and their use will ensure that comparable medical conditions are assigned comparable evaluations. Since the maximum inter-incisal opening is between 40 and 60 millimeters, 31 to 40 millimeters represents the lowest range of limitation which might interfere with mastication or speech while preserving an objective standard. For these reasons, we do not believe any change in the proposed criteria is warranted.

VA appreciates the comment 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, 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 impact 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 numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: August 19, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. Section 4.149 is added under the undesignated center heading " Dental and Oral Conditions" to read as follows:

§ 4.149 Rating diseases of the teeth and gums.

Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, periodontal disease (pyorrhea), and Vincent's stomatitis are not disabling conditions, and may be considered service-connected solely for the purpose of determining entitlement to dental examinations or outpatient dental treatment under the provisions of §§ 17.120 or 17.123 of this chapter.

3. Section 4.150 is revised to read as follows:

§ 4.150 Schedule of ratings—dental and oral conditions.

	Rating
9900 Maxilla or mandible, chronic osteomyelitis or osteoradionecrosis of:	
Rate as osteomyelitis, chronic under diagnostic code 5000.	
9901 Mandible, loss of, complete, between angles	100
9902 Mandible, loss of approximately one-half:	
Involving temporomandibular articulation	50
Not involving temporomandibular articulation	30
9903 Mandible, nonunion of:	
Severe	30
Moderate	10
NOTE—Dependent upon degree of motion and relative loss of masticatory function.	
9904 Mandible, malunion of:	
Severe displacement	20
Moderate displacement	10
Slight displacement	0
NOTE—Dependent upon degree of motion and relative loss of masticatory function.	
9905 Temporomandibular articulation, limited motion of:	
Inter-incisal range:	
0 to 10 mm	40
11 to 20 mm	30
21 to 30 mm	20
31 to 40 mm	10
Range of lateral excursion:	
0 to 4 mm	10
NOTE—Ratings for limited inter-incisal movement shall not be combined with ratings for limited lateral excursion.	
9906 Ramus, loss of whole or part of:	
Involving loss of temporomandibular articulation	
Bilateral	50
Unilateral	30
Not involving loss of temporomandibular articulation	
Bilateral	30
Unilateral	20
9907 Ramus, loss of less than one-half the substance of, not involving loss of continuity:	
Bilateral	20
Unilateral	10
9908 Condyloid process, loss of, one or both sides	30
9909 Coronoid process, loss of:	
Bilateral	20
Unilateral	10
9911 Hard palate, loss of half or more:	
Not replaceable by prosthesis	30
Replaceable by prosthesis	10
9912 Hard palate, loss of less than half of:	
Not replaceable by prosthesis	20
Replaceable by prosthesis	0
9913 Teeth, loss of, due to loss of substance of body of maxilla or mandible without loss of continuity:	
Where the lost masticatory surface cannot be restored by suitable prosthesis:	
Loss of all teeth	40
Loss of all upper teeth	30
Loss of all lower teeth	30
All upper and lower posterior teeth missing	20
All upper and lower anterior teeth missing	20
All upper anterior teeth missing	10
All lower anterior teeth missing	10
All upper and lower teeth on one side missing	10
Where the loss of masticatory surface can be restored by suitable prosthesis	0
NOTE—These ratings apply only to bone loss through trauma or disease such as osteomyelitis, and not to the loss of the alveolar process as a result of periodontal disease, since such loss is not considered disabling.	
9914 Maxilla, loss of more than half:	
Not replaceable by prosthesis	100
Replaceable by prosthesis	50
9915 Maxilla, loss of half or less:	
Loss of 25 to 50 percent:	
Not replaceable by prosthesis	40
Replaceable by prosthesis	30
Loss of less than 25 percent:	
Not replaceable by prosthesis	20
Replaceable by prosthesis	0
9916 Maxilla, malunion or nonunion of:	
Severe displacement	30
Moderate displacement	10
Slight displacement	0

[FR Doc. 94–1046 Filed 1–14–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–12–01–6154; A–1-FRL–4822–8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; State Order No. 7019, United Technologies Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision consists of Connecticut State Order No. 7019, which requires The United Technology Corporation (UTC) to limit the operation of certain

boilers, increase certain stack heights, and limit the sulfur content of fuels burned in certain boilers, as specified in the order. This action is supported by a modeling study prepared by TRC Environmental Consultants, Inc. in June, 1991. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective March 21, 1994, unless notice is received by February 17, 1994, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW., (ANR–443), Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 565–3229.

SUPPLEMENTARY INFORMATION: On March 11, 1993, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 7019.

Background

The Hamilton Standard Division of United Technologies Corporation (UTC), located at Windsor Locks, CT, operates several boilers which emit sulfur dioxide (SO_2). On April 6, 1990, the Hamilton Standard Division received a notice of violation from the Connecticut Department of Environmental Protection (CT DEP). Dispersion modeling done by CT DEP showed potential violations of the 3-hour and 24-hour Connecticut Ambient Air Quality Standards (CAAQS) and National Ambient Air Quality Standards (NAAQS) for SO_2. TRC Consultants, under contract to UTC, performed a subsequent dispersion modeling study to determine which actions UTC could take to prevent these violations. In June, 1991, TRC provided a report which recommended a compliance strategy for UTC to follow. On January 7, 1993, CT DEP issued State Order No. 7019, which requires UTC to implement this compliance strategy.

Summary of SIP Revision

The SIP revision consists of Connecticut State Order No. 7019. The order makes certain recommendations contained in the TRC report entitled *Air Quality Modeling Analysis to Demonstrate* SO_2 CAAQS/NAAQS Compliance at the Hamilton Standard Division of United Technologies Corporation Windsor Locks, Connecticut Facility legally binding on UTC. These recommendations are based on modeling done by TRC in accordance with EPA and Connecticut DEP modeling guidance. The Modeling study used the ISCST and PTMTPA-CONN models.

Under State Order No. 7019, UTC will be required to take the following actions:

(1) Concerning the four boilers designated 518(41), 519(42), 520(43), and 521(44), not more than three (3) may be operated simultaneously.

(2) Boilers 519(42) and 520(43) shall burn only Natural Gas or No. 6 fuel oil with sulfur content not exceeding 1.0%, and boilers 518(41) and 521(44) shall burn only No. 6 fuel oil with sulfur content not exceeding 1.0%.

(3) Boilers 506(48) and 505(49) shall burn either natural gas or No. 4 or No. 2 fuel oil with sulfur content not exceeding 0.3%.

(4) Test Cell D and Test Cell E shall be restricted to burning Jet-A fuel with sulfur content not exceeding 0.3%.

(5) The stack heights of Boilers 518(41), 519(42), 520(43), and 521(44) shall be increased to not less than 23.4 meters.

Enforcement

State Order No. 7019 contains requirements that UTC keep records of the sulfur content of each purchase of fuel, and specifies the dates for the commencement and completion of the higher stacks required by the order. These records will allow the state to monitor compliance. State Order No. 7019 also contains a schedule of fines which UTC must pay if a violation occurs, as well as the name and address of the person at the Connecticut Department of Environmental Protection to whom payments are to be sent.

EPA has reviewed State Order No. 7019 and has determined that the restrictions in sulfur content and the increases in stack height are sufficient to maintain the NAAQS in the vicinity of UTC's facility in Windsor Locks, Connecticut.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, by February 17, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on March 21, 1994.

Final Action

EPA is approving State Order No. 7019 dated March 11, 1993 and effective in the State of Connecticut on February 19, 1993. The order is supported by a modeling study which demonstrates attainment of the NAAQS.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR

2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 24, 1993.

Patricia L. Meaney,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(63) to read as follows:

§ 52.370 Identification of plan.

* * * * * *

(c) * * *

(63) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on March 11, 1993.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated March 11, 1993 submitting a revision to the Connecticut State Implementation Plan.

(B) Connecticut State Order No 7019 dated March 11, 1993, and effective in the State of Connecticut on February 19, 1993.

(ii) Additional materials.

(A) Air Quality Modeling Analysis to Demonstrate SO_2 CAAQS/NAAQS Compliance at the Hamilton Standard Division of United Technologies Corporation Windsor Locks CT; June 1991.

[FR Doc. 94–1063 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[TX–14–1–6091; FRL–4825–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing PM–10 for El Paso

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Texas State Implementation Plan (SIP) for PM–10 in El Paso. PM–10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The EPA is also approving the PM–10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the Clean Air Act (CAA) regarding implementation plans and revisions for international border areas.

EFFECTIVE DATE: This action will become effective on February 17, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air ProgramsBranch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (6101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

Background

El Paso, Texas, was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please reference 56 **Federal Register** (FR) 56694 (November 6, 1991), and 57 FR 13498 and 13537 (April 16, 1992). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts one and four of part D, title I of the CAA.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under title I of the CAA, including those state submittals containing moderate PM–10 nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Those moderate PM–10 nonattainment areas designated nonattainment under section 107(d)(4) of the CAA were to submit SIPs to the EPA by November 15, 1991. The CAA outlined certain required items to be included in the SIPs. These required items, due November 15, 1991, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM–10 in the nonattainment area (section 172(c)(3) of the CAA); (2) a permit program to be submitted by June 30, 1992, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of PM–10 (section 189(a)(1)(A)); (3) a demonstration (including air quality modeling) that the plan provides for attainment of the PM–10 NAAQS as

[1] The 1990 CAAA made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM–10 National Ambient Air Quality Standards (NAAQS) (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the CAAA, 42 U.S.C. 7401*et seq.*

expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B)); (4) provisions to assure that Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), for control of PM–10 will be implemented no later than December 10, 1993 (sections 172(c)(1) and 189(a)(1)(C)). For sources emitting insignificant (de minimis) quantities of PM–10, the EPA's policy is that it would be unreasonable and would not constitute RACM to require controls on the source. Please reference 57 FR 13540. Also, when evaluating RACM and RACT, technological and economical feasibility determinations are to be conducted (57 FR 13540–13544); (5) quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attaining the PM–10 NAAQS (section 189(c)); (6) contingency measures due November 15, 1993 (please reference 57 FR 13543), that are to be implemented if the EPA determines that the area has failed to make RFP or to attain the primary standards by the applicable date (section 172(c)(9)); and (7) control requirements for major stationary sources of PM–10 precursors, unless the EPA determines inappropriate. The CAA, in section 189(e), states that control requirements applicable to major stationary sources of PM–10 will also be applicable to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM–10 levels that exceed the PM–10 ambient standards in the area.

Response to Comments

The EPA received one comment letter from Chevron U.S.A. Products Company on its October 8, 1993 (58 FR 52467–52474), FR proposal to approve the El Paso moderate nonattainment area PM–10 SIP, including the proposal to approve the El Paso PM–10 SIP as meeting the requirements of section 179B of the CAA regarding implementation plans and revisions for international border areas. The letter expressed overall agreement with the EPA's proposal to approve the El Paso PM–10 nonattainment SIP, but also posed one question regarding the three year progress report discussed in the section entitled "Milestones and Reasonable Further Progress" (58 FR 52472). Chevron expressed overall support for the three year PM–10 progress report requirement, beginning November 15, 1994, but questioned whether the EPA should require as a part of the report an evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment. Chevron stated that since the EPA has found that the El Paso area would not need any additional PM–10 control measures but for transborder PM–10, they did not see how any additional controls could be justified as feasible for El Paso under the CAA.

The EPA, in this final rulemaking action, is approving the El Paso PM–10 SIP because it shows timely attainment of the PM–10 NAAQS based on United States (El Paso County) emissions alone. Nevertheless, because the PM–10 NAAQS reflects public health and welfare standards, and because PM–10 NAAQS exceedances are still being monitored in the El Paso nonattainment area, the EPA is encouraging the State of Texas to evaluate the feasibility of further reductions in El Paso County PM–10 emissions beyond the amounts accounted for by the control measures put in place by the PM–10 SIP being approved in this action. Additional reductions would further reduce the PM–10 concentrations to which the El Paso County population is exposed to by virtue of the additional contribution from international transport. Any additional control measures found to be feasible by the State of Texas would be subject to full public notice and public comment. The State of Texas has committed, provided that adequate information becomes available, to develop a contingency plan for PM–10 in the El Paso area. The State also anticipates the continuation of a cooperative effort to study PM–10 air quality in the El Paso/Juarez air basin.

Final Action

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565–13566). In this final action, the EPA is granting approval of the El Paso, Texas, moderate nonattainment area PM–10 SIP because it meets all of the applicable requirements of the CAA.

This SIP revision was submitted to the EPA by cover letter from the Governor of Texas dated November 5, 1991. OnOctober 8, 1993, the EPA announced its proposed approval of the moderate nonattainment area PM–10 SIP for El Paso (58 FR 52467–52474). In that rulemaking action, the EPA described in detail its interpretations of title I and its rationale for proposing to approve the El Paso PM–10 SIP, taking into consideration the specific factual issues presented.

The EPA requested public comments on all aspects of the proposal (please reference 58 FR 52474), and one comment letter was received during the comment period, which ended onNovember 8, 1993. This final action on the El Paso PM–10 SIP is unchanged from the October 8, 1993, proposed approval action. The discussion herein provides only a broad overview of the proposed action that the EPA is now finalizing. The public is referred to the October 8, 1993, proposed approval FR action for a full discussion of the action that the EPA is now finalizing.

The EPA finds that the State of Texas' PM–10 SIP for the El Paso nonattainment area meets the RACM/RACT requirement. The State of Texas included a listing of RACT, federally enforceable in approved permits, being used at all major and other stationary sources in the El Paso area. In addition, the EPA views the State's prescribed burning, fugitive dust, and residential wood combustion control measures in Regulation I and the El Paso City Ordinance 9.38, as contingency measures that go beyond the core RACM control strategy. The EPA is also approving the memorandum of understanding between the City of El Paso and the Texas Air Control Board (TACB) (now the Texas Natural Resource Conservation Commission), which serves to define the division of responsibility for, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code (City of El Paso episodic curtailment program regarding wood combustion).

The State of Texas referenced section 179B of the CAA when presenting their modeling demonstration for El Paso. The demonstration showed that the El Paso PM–10 moderate nonattainment area would be in attainment of the PM–10 NAAQS both currently and by December 31, 1994, based on dispersion modeling of United States (El Paso County) PM–10 emissions alone. After review, the EPA found the demonstration to be satisfactory. Details of the EPA's evaluation were discussed in theOctober 8, 1993, proposed approval action and in the EPA's Technical Support Document. Accordingly, the EPA is approving the demonstration as showing that the SIP provides for timely attainment of the PM–10 NAAQS but for emissions emanating from Mexico.

The EPA is also granting the El Paso PM–10 nonattainment area the exclusion from PM–10 precursor control requirements authorized under section

189(e) of the CAA. Finally, to satisfy section 189(c) of the CAA (regarding quantitative milestones and RFP), the State of Texas will report to the EPA every three years, beginning on November 15, 1994, the following information regarding the El Paso nonattainment area: (1) The status and effectiveness of the existing controls, including quantification of emission reductions achieved relative to those projected in the El Paso PM–10 SIP submittal; (2) significant changes in the inventory due to new source growth or other activities (to allow for a comparison with the 1990 base year PM–10 emission inventory, and the projected 1994 PM–10 emission inventory); and (3) an evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed at 58 FR 52467 (October 8, 1993). As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from table one to table three under the processing procedures established at 54 FR 2214, January 19, 1989, and revised via memorandum from the Assistant Administrator for Air and Radiation to the Regional Administrators datedOctober 4, 1993.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

This action has been classified as a table three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 onSeptember 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: December 23, 1993.

W. B. Hathaway,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(79) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(79) A revision to the Texas SIP addressing moderate PM–10 nonattainment area requirements for El Paso was submitted by the Governor of Texas by letter dated November 5, 1991. The SIP revision included, as per section 179B of the Clean Air Act, a modeling demonstration providing for timely attainment of thePM–10 National Ambient Air Quality Standards for El Paso but for emissions emanating from Mexico.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.101, "General Prohibition;" Section 111.103, "Exceptions to Prohibition of Outdoor Burning;" Section 111.105, "General Requirements for Allowable Outdoor Burning;" Section 111.107, "Responsibility for Consequences of Outdoor Burning;" Section 111.143, "Materials Handling;" Section 111.145, "Construction and Demolition," Subsections 111.145(1), 111.145(2); Section 111.147, "Roads, Streets, and Alleys," Subsections 111.147(1)(B), 111.147(1)(C), 111.147(1)(D); and Section 111.149, "Parking Lots," as adopted by the TACB on June 16, 1989.

(B) TACB Order No. 89–03, as adopted by the TACB on June 16, 1989.

(C) Revisions to TACB, Regulation I, Section 111.111, "Requirements for Specified Sources," Subsection 111.111(c); Section 111.141, "Geographic Areas of Application and Date of Compliance;" Section 111.145, "Construction and Demolition," Subsections 111.145(first paragraph), 111.145(3); and Section 111.147, "Roads, Streets, and Alleys," Subsections 111.147(first paragraph), 111.147(1)(first paragraph), 111.147(1)(A), 111.147(1)(E), 111.147(1)(F), and 111.147(2), as adopted by the TACB on October 25, 1991.

(D) TACB Order No. 91–15, as adopted by the TACB on October 25, 1991.

(E) City of El Paso, Texas, ordinance, Title 9 (Health and Safety), Chapter 9.38 (Woodburning), Section 9.38.010,

"Definitions;" Section 9.38.020, "No-Burn Periods;" Section 9.38.030, "Notice Required;" Section 9.38.040, "Exemptions;" Section 9.38.050, "Rebuttable Presumption;" and Section 9.38.060, "Violation Penalty," as adopted by the City Council of the City of El Paso on December 11, 1990.

(ii) Additional material.

(A) November 5, 1991, narrative plan addressing the El Paso moderate PM–10 nonattainment area, including emission inventory, modeling analyses, and control measures.

(B) A Memorandum of Understanding between the TACB and the City of El Paso defining the actions required and the responsibilities of each party pursuant to the revisions to the Texas PM–10 SIP for El Paso, passed and approved on November 5, 1991.

(C) TACB certification letter dated July 27, 1989, and signed by Allen Eli Bell, Executive Director, TACB.

(D) TACB certification letter dated October 28, 1991, and signed by Steve Spaw, Executive Director, TACB.

(E) El Paso PM–10 SIP narrative from pages 91–92 that reads as follows: ". . . provided that adequate information becomes available, a contingency plan will be developed in conjunction with future El Paso PM–10 SIP revisions. It is anticipated that EPA, TACB, the City of El Paso, and SEDUE will continue a cooperative effort to study the PM–10 air quality in the El Paso/Juarez air basin. Based on the availability of enhanced emissions and monitoring data, as well as more sophisticated modeling techniques (e.g., Urban Airshed Model), future studies will attempt to better define the relative contributions of El Paso and Juarez to the PM–10 problem in the basin. At that time, a contingency plan can more appropriately be developed in a cooperative effort with Mexico."

[FR Doc. 94–1062 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CA–14–5–5756; FRL–4822–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on September 2, 1992. The revisions concern rules from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) which is comprised of the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD, Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from vegetable oil processing and from can and coil coating operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on February 17, 1994.

ADDRESSEES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Jerry Kurtzweg ANR–443, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1992 at 57 FR 40157, EPA proposed to approve the following rules into the California SIP: SJVUAPCD Rule 461.2, Vegetable Oil Processing Operations, and SJVUAPCD Rule 460.4, Can and Coil Coating Operations. Rule 461.2 was adopted by SJVUAPCD on April 11, 1991; and Rule 460.4 was adopted by SJVUAPCD September 19, 1991. The rules were submitted by the California Air Resources Board (CARB) to EPA on May 30, 1991 and January 28, 1992 respectively. The rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPR cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPR cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided at 57 FR 40157 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs for Rule 461.2 and 460.4 dated April 30, 1992 and March 12, 1992 respectively).

Response to Comments

A 30-day public comment period was provided at 57 FR 40157. EPA received no comments on rule 460.4. EPA received comments on rule 461.2 from three sources: (1) The National Cottonseed Products Association ("NCPA"); (2) the J.G. Boswell Company ("Boswell"); and (3) the Institute of Shortening and Edible Oils, Inc ("Institute"). All three commented on SJVUAPCD's definition of volatile organic compounds ("VOCs")—suggesting that the definition not include vegetable oil emissions. In addition, the NCPA and Institute also recommmended that SJVUAPCD rule 461.2 specify performance standards or emissions limits rather than specific equipment for RACT controls.

The comments are discussed below.

1. Definition of VOC

Summary of comments: Rule 461.2 defines VOC as "any compound containing at least one atom of carbon except for the following exempt compounds." Vegetable oil is not listed as an exempt compound. The comments stated that the rule should exempt vegetable oil from the definition of VOC because of its low volatility and because the EPA has determined that vegetable

oil should not be considered a VOC under EPA test methods.

Responses: (1) Rule 461.2 does not specify RACT for controlling VOC emissions from vegetable oil; rather, the purpose of the rule is to establish RACT for controlling the VOC emissions from the processing operations which extract vegetable oil. Hexane extraction of vegetable oil is known to cause substantial emissions of VOCs, and these are the types of emissions that are controlled by Rule 461.2, not emissions from vegetable oil. The EPA policy memorandum dated April 1991 ("The Impact of Declaring Soybean Oil Exempt from VOC Regulations on the Coatings Program") specifically addresses cooking processes which use vegetable oil. Besides, Rule 461.2 would not be considered defective even if it adopted a more stringent definition of VOC than EPA.

(2) *Specification of Control Equipment:* The NCPA and Institute commented that Rule 461.2 was defective because the rule specifies control technology rather than a performance standard—the NCPA and the Institute argue that this approach will reduce flexibility and discourage innovation in identifying control equipment.

Response: Rule 461.2 provides that emissions from the desolventizer-toaster or extractor be controlled either by use of a condenser and mineral oil scrubber with a 90% control efficiency, or with "[a]n emission control device, with a combined capture and control efficiency of at least 90 percent by weight, confirmed by source testing." EPA interprets this provision of the rule as establishing a performance standard rather than as establishing a specific control technology in that alternatives to the condenser and the scrubber are allowed as long as capture and control efficiency performance standards are met.

Although the second requirement of Rule 461.2 (which states that emissions from the desolventizer-toaster conveyor, cooler or tumbler, be controlled with a mineral oil scrubber that has a combined capture and control efficiency of at least 90 percent by weight) does designate a specific control technology, EPA has not placed regulatory restrictions on State and local agencies with respect to the range of acceptable measures and/or performance standards that must be specified in a RACT rule. EPA believes that the State should decide the degree of flexibility to provide to regulated industry in selecting acceptable control measures and/or performance standards.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 16, 1993.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (185)(i)(C)(*5*), and (187)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(185) * * *

(i) * * *

(C) * * *

(*5*) New Rule 461.2, adopted on April 11, 1991.

* * * * *

(187) * * *

(i) * * *

(A) * * *

(4) New Rule 460.4, adopted on September 19, 1991.

* * * * *

[FR Doc. 94–1059 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MT9–1–6134 & MT13–1–6133; FRL–4807–5]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain Federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Missoula. In this final rule, EPA also approves the Missoula City-County Air Pollution Control Program, except several rules regarding emergency procedures, permitting, open burning, wood-waste burners, new source performance standards, hazardous air pollutant standards, and variances. EPA will propose separate action on these rules when the State fulfills its related commitments. One commitment has been fulfilled (see the This Action section of this document for more information). If the State fails to fulfill the remainder of its commitments, EPA will take appropriate action. Further, EPA is declining to take action on Missoula's odor provisions.

EFFECTIVE DATE: This rule will become effective on February 17, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and Mr. Jerry Kurtzweg, ANR–443, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.

EPA has issued a "General Preamble" describing its preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas (i.e., those areas designated nonattainment for PM_{10} under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

On September 15, 1993, EPA announced its proposed approval of the Missoula, Montana moderate nonattainment area PM_{10} SIP, including parts of the Missoula City-County Air Pollution Control Program, as meeting those moderate nonattainment area PM_{10} SIP requirements due on November 15, 1991 (58 FR 48339–48343). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Missoula moderate nonattainment area PM_{10} SIP, taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 58 FR 48343), and comments from the State of Montana and Stone Container Corporation were received during the comment period, which ended on October 15, 1993. (For further discussion of these public comments, please see below and the Addendum to the TSD for EPA's proposed rulemaking action on this SIP.) This final action on the Missoula moderate nonattainment area PM_{10} SIP, and portions of the Missoula City-County Air Pollution Control Program, is unchanged from the September 15, 1993 proposed approval action, except for two typographical errors noted by EPA. First, in the table describing sources, controls, emission reductions, and effective dates, the effective date for the Louisiana-Pacific permit modification should have been listed as March 20, 1992 instead of January 23, 1992, as indicated. Second, under the Enforceability Issues section, the final modification date for Stone

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM_{10} National Ambient Air Quality Standards (see Public Law No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended ("the Act"), 42 U.S.C. 7401, *et seq.*

Container Corporation's air quality permit #2589-M should have been January 23, 1992 instead of November 25, 1992, as indicated.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the September 15, 1993 proposed rule for a more in-depth discussion of the action now being finalized.

II. Response to Comments

EPA did not receive any adverse public comments regarding its September 15, 1993 proposed approval of the Missoula moderate nonattainment area PM_{10} SIP (58 FR 48339–48343). However, the State of Montana submitted comments for clarification purposes, and Stone Container Corporation submitted comments to express general support for EPA's action. Comments were as follows.

In a letter dated September 24, 1993 from Jeff Chaffee, Montana Department of Health and Environmental Sciences, to Amy Platt, EPA, and through verbal communications, the State indicated that since submitting the original moderate nonattainment area PM_{10} SIP for Missoula, it discovered a minor arithmetic error in its 24-hour attainment and maintenance demonstrations, as well as an error in the way it had addressed background concentrations in both the 24-hour and annual attainment and maintenance demonstrations. The background concentrations, i.e., naturally occurring PM_{10} concentrations that cannot be controlled, had not been subtracted from the 24-hour and annual design values before apportioning the credits derived from the outlined control measures. The State has corrected these calculations, and with the adjustments, the 24-hour and annual attainment values (i.e., ambient PM_{10} air quality levels achieved by 1995 [2]) are as follows: 143.8 $\mu g/m^3$ and 44.7 $\mu g/m^3$, respectively. (Before these adjustments, the 24-hour and annual attainment values were 142.1 $\mu g/m^3$ and 45.3 $\mu g/m^3$, respectively.) The adjusted 24-hour and annual maintenance values (i.e., ambient PM_{10} air quality levels maintained through January 1, 1998) are 147.0 $\mu g/m^3$ and 45.5 $\mu g/m^3$, respectively. (Before these adjustments, the 24-hour and annual maintenance values were 145.2 $\mu g/m^3$ and 46.2 $\mu g/m^3$, respectively.)

Since these corrected calculations are based on properly handling the background concentration and since the adjusted values still adequately demonstrate attainment and maintenance of the PM_{10} NAAQS and do not represent major changes to those considered in EPA's proposed action, EPA is proceeding with its approval of this SIP. There is no need to adopt additional control measures based on these adjusted calculations.

Comments were also received in an October 11, 1993 letter from Larry Weeks, Stone Container Corporation, to Amy Platt, EPA. The comments were not adverse and expressed general support for EPA's action on the Missoula PM_{10} SIP. However, several of Stone Container's comments indicate a misunderstanding of EPA's intended action on this SIP and need further explanation.

First, EPA did not propose to approve the odor control rules contained in the SIP submittal and Stone Container communicated its support but referenced "Montana's odor control rules." EPA's action regarding odor regulations applies specifically to the Missoula City-County regulation (Chapter IX, Subchapter 14, Rule 1427) contained in the SIP submittal.

Second, Stone Container submitted comments suggesting it viewed the reduction in allowable PM_{10} emissions from its No. 5 recovery boiler as voluntary reductions. Stone Container's recovery boilers were identified by chemical mass balance receptor modelling to contribute 8.1% of the PM_{10} ambient concentrations in Missoula. The SIP submittal demonstrated that Stone Container is contributing to the PM_{10} nonattainment problem in the Missoula and vicinity nonattainment area and that reductions in allowable emissions from recovery boiler No. 5 are part of an enforceable permit that are necessary to demonstrate expeditious attainment of the PM_{10} NAAQS in the area. EPA agrees with the State's judgement that the reduction in allowable emissions from recovery boiler No. 5 is necessary to ensure expeditious attainment of the PM_{10} NAAQS in the area. EPA's final approval of this limitation means that it will become part of the federally enforceable implementation plan. See, e.g., sections 113 and 302(q) of the Act.

Next, Stone Container commented that because EPA proposed to approve the control requirement exclusion for major stationary sources of PM_{10} precursors authorized by section 189(e) of the Act, it would not make sense for the SIP to include contingency measures that would call for limitations on industrial sources. Contingency measures for moderate PM_{10} nonattainment areas are due to EPA no later than November 15, 1993 and were not submitted by the State as part of the SIP revisions being addressed in this action. Thus, this comment is misplaced and does not address a matter within the scope of the September 15, 1993 proposed action on the SIP submittals for the Missoula area. For clarification purposes, EPA simply notes that EPA's finding that major sources of PM_{10} precursors do not contribute significantly to PM_{10} levels in excess of the NAAQS in Missoula addresses PM_{10} precursors only. Note that this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. Stone Container has been shown to be currently contributing to primary PM_{10} emissions in Missoula.

Finally, since Stone Container has been shown to contribute to the PM_{10} ambient concentrations in Missoula, contingency measures that include limitations on its emissions could be sought by the State. Although Stone Container is located outside the nonattainment area, it is still a contributing source (approximately 8% of the PM_{10} ambient concentrations in Missoula). Therefore, it may be necessary and reasonable to include emission reductions at Stone Container as part of the contingency measures for Missoula. EPA will reserve judgement on the adequacy of any contingency measures submitted by the State until such time as EPA receives a contingency measure submittal and provides public notice and opportunity for public comment on its adequacy.

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted the Missoula PM_{10} SIP with a letter dated June 4, 1992, and requested that EPA take action on the June 4, 1992 submittal together with the August 20, 1991 submittal of the Missoula City-County Air Pollution Control Program. The submittals taken together were intended to satisfy those moderate nonattainment area PM_{10} SIP requirements due for Missoula on November 15, 1991. As described in EPA's proposed action on this SIP (58 FR 48339–48343, September 15, 1993), the Missoula moderate nonattainment area PM_{10} plan includes, among other

[2] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment by January 1, 1995. EPA is approving the State's demonstration on the basis of the de minimis differential between the two dates.

things, a comprehensive and accurate emissions inventory, control measures that satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by January 1, 1995 (see footnote #2), provisions for meeting the November 15, 1994 quantitative milestone and reasonable further progress, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Missoula.[3] Please refer to EPA's notice of proposed rulemaking (58 FR 48339) and the TSD for that action for a more detailed discussion of these elements of the Missoula plan.

In this final rulemaking, EPA announces its approval of those elements of the Missoula, Montana moderate nonattainment area PM_{10} SIP that were due on November 15, 1991, and submitted on August 20, 1991 and June 4, 1992. In this final action, EPA is also announcing its approval of the Missoula City-County Air Pollution Control Program regulations (which were submitted on August 20, 1991 and June 4, 1992) except for the following provisions: Chapter IX–Subchapter 4, Emergency Procedures; Subchapter 11, Permit, Construction & Operation of Air Contaminant Sources; Subchapter 13, Open Burning; Subchapter 14, Rule 1407, Wood-Waste Burners, Rule 1423, Standard of Performance for New Stationary Sources (NSPS), Rule 1424, Emission Standards for Hazardous Air Pollutants (NESHAPs), and Rule 1427, Control of Odors in Ambient Air; and Chapter X, Variances. EPA described the deficiencies associated with these rules in its notice of proposed rulemaking and the TSD for that action.

EPA finds that the State of Montana's PM_{10} SIP for the Missoula moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Missoula and, therefore, were targeted for control in the SIP. The State has demonstrated that by applying control measures to area sources (re-entrained road dust, residential wood combustion, prescribed burning, and motor vehicle exhaust), as well as reducing allowable emissions through air quality permit modifications for Louisiana-Pacific and Stone Container, Missoula will be in attainment by January 1, 1995 (see footnote #2). It does not appear that applying further control measures to these sources would expedite attainment. EPA views the following measures as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Missoula: (a) Missoula County Rule 1401(7), which sets sanding and chip sealing standards and street sweeping and flushing requirements; (b) Missoula County Rule 1401(9), which establishes liquid de-icer requirements; (c) industry permit modifications made to reduce allowable PM_{10} emissions from Stone Container Corporation's recovery boiler No. 5 and Louisiana-Pacific Corporation's particle board dryers; and (d) the Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover. Further, although no credit was claimed in the SIP, EPA is approving the following measures to make them federally enforceable and to further strengthen the SIP. The measures provide additional PM_{10} air quality protection. These measures are: (a) Missoula County Rule 1428, which sets standards for the regulation for solid fuel burning devices; and (b) Missoula County Rule 1310(3), which sets standards for the regulation of prescribed wildland open burning.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Missoula moderate PM_{10} nonattainment area SIP (58 FR 48339–48343). EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Missoula will result in the attainment of the PM_{10} NAAQS by January 1, 1995 (see footnote #2). By this notice EPA is approving the Missoula PM_{10} moderate nonattainment area plan's control measures as satisfying the RACM, including RACT, requirement.

As noted, EPA did not propose approval, nor is EPA taking final action, on some portions of the Missoula City-County Air Pollution Control Program regulations. To address EPA-identified deficiencies in the Missoula and statewide SIP, the State committed to complete additional tasks to correct these deficiencies (except the concerns EPA raised regarding the variance provisions). A more detailed explanation of the State's commitments can be found in EPA's September 15, 1993 proposed approval of the Missoula moderate nonattainment area PM_{10} SIP (58 FR 48339–48343) and the TSD for that action). Since none of the rules associated with these commitments has an impact on the attainment demonstration, credited control strategies in the Missoula PM_{10} SIP, or other Federal Clean Air Act SIP requirements for the Missoula moderate PM_{10} nonattainment area due to EPA on November 15, 1991, EPA will take separate action, as appropriate, when such commitments are fulfilled by the State, and also will address the variances chapter at that time. Further, EPA is declining to take action on Chapter IX, Subchapter 14: Rule 1427, Control of Odors in Ambient Air. These odor provisions do not have a reasonable connection to the NAAQS-related air quality goals of the Clean Air Act.

The State has fulfilled one commitment to revise its NSPS and NESHAPs regulations to incorporate all Federal requirements promulgated through July 1, 1992. In a March 9, 1993 submittal, the State satisfied this commitment, and EPA will announce its action on these revisions in a separate notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Final Action

This document announces EPA's final action on the action proposed at 58 FR 48339. As noted elsewhere in this final action, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order (EO) 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 3, 1993.

Kerrigan Clough,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(30) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(30) The Governor of Montana submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Missoula, Montana, and the Missoula City-County Air Pollution Control Program regulations with letters dated August 20, 1991 and June 4, 1992. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Missoula on November 15, 1991.

(i) Incorporation by reference.

(A) Stipulation signed April 29, 1991 between the Montana Department of Health and Environmental Sciences and the Missoula City-County Air Pollution Control Board, which delineates responsibilities and authorities between the two entities.

(B) Board order issued on June 28, 1991 by the Montana Board of Health and Environmental Sciences approving the comprehensive revised version of the Missoula City-County Air Pollution Control Program.

(C) Board order issued on March 20, 1992 by the Montana Board of Health and Environmental Sciences approving the amendments to Missoula City-County Air Pollution Control Program Rule 1401, concerning the use of approved liquid de-icer, and Rule 1428, concerning pellet stoves.

(D) Missoula County Rule 1401 (7), effective June 28, 1991, which addresses sanding and chip sealing standards and street sweeping and flushing requirements.

(E) Missoula County Rule 1401 (9), effective March 20, 1992, which addresses liquid de-icer requirements.

(F) Missoula County Rule 1428, effective June 28, 1991, with revisions to sections (2)(l)-(p), (4)(a)(i), and (4)(c)(vi) of Rule 1428, effective March 20, 1992, which addresses requirements for solid fuel burning devices.

(G) Missoula County Rule 1310 (3), effective June 28, 1991, which addresses prescribed wildland open burning.

(H) Other Missoula City-County Air Pollution Control Program regulations effective June 28, 1991, as follows: Chapter I. Short Title; Chapter II. Declaration of Policy and Purpose; Chapter III. Authorities for Program; Chapter IV. Administration; Chapter V. Control Board, Meetings-Duties-Powers; Chapter VI. Air Quality Staff; Chapter VII. Air Pollution Control Advisory Council; Chapter VIII. Inspections; Chapter IX., Subchapter 7 General Provisions; Chapter IX., Subchapter 14, Emission Standards, Rules 1401, 1402, 1403, 1404, 1406 (with amendments effective March 20, 1992), 1411, 1419, 1425, and 1426; Chapter XI. Enforcement, Judicial Review and Hearings; Chapter XII. Criminal Penalties; Chapter XIII. Civil Penalties; Chapter XIV. Non-Compliance Penalties; Chapter XV. Separability Clause; Chapter XVI. Amendments and Revisions; Chapter XVII. Limitations, and Appendix A, Maps.

(ii) Additional material.

(A) Montana Department of Health and Environmental Sciences Air Quality Permit #2303-M, with a final modification date of March 20, 1992, for Louisiana-Pacific Corporation's particle board manufacturing facility.

(B) Montana Department of Health and Environmental Sciences Air Quality Permit #2589-M, with a final modification date of January 23, 1992, for Stone Container Corporation's pulp and paper mill facility.

(C) Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover.

[FR Doc. 94–1061 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MD29–1–6195; FRL–4826–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: This document serves to correct the duplicate numbering of paragraphs found in the Identification of Plan Section of the Maryland State Implementation Plan (SIP). This technical correction is necessary so as to assign an individual paragraph number for a SIP revision approved by EPA on May 16, 1990.

EFFECTIVE DATE: This rule will become effective on February 17, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597-1325.

SUPPLEMENTARY INFORMATION: On May 16, 1990 (55 FR 20269), EPA approved a revision submitted by Maryland consisting of a bubble for the American Cyanamid plant in Havre de Grace. EPA's approval action was incorporated by reference (IBR'd) into the Identification of Plan section (40 CFR 52.1070) of the federally-approved Maryland SIP, and was assigned paragraph § 52.1070(c)(87).

Subsequently, it was discovered that 40 CFR 52.1070(c)(87) had already been assigned to a prior EPA approval action of a revision to the Maryland SIP. Accordingly, an editorial note was published in paragraph § 52.1070(c)(87), explaining that EPA will correctly redesignate in a future notice the (c)(87) paragraph describing EPA's approval of the American Cyanamid bubble. By this action, EPA redesignates the IBR paragraph associated with the May 16, 1990 approval action as § 52.1070(c)(91).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 4, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart V of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by redesignating the second paragraph currently identified as (c)(87) as paragraph (c)(91).

[FR Doc. 94–1060 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 59, No. 11
Tuesday, January 18, 1994

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[RIH 3150–AD94]

Environmental Review for Renewal of Operating Licenses: Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing regional meetings to discuss options for addressing certain concerns expressed by a number of States in comments submitted to the NRC on the proposed rule on the environmental review required for renewal of nuclear power plant operating licenses. The concerns that will be addressed involve provisions of the proposed rule that the States see as being in conflict with the traditional authority of the States to regulate electrical utilities with respect to questions of need, reliability, cost, resource options, and other non-safety aspects of nuclear power generation. The minutes will be transcribed by a court recorder in all regional meetings.

DATES: The dates of the regional meetings are: Rockville, MD, February 9, 1994; Rosemont, IL, February 15, 1994; Chicopee, MA, February 17, 1994. Parties interested in participating in a panel should contact Donald P. Cleary no later than January 28, 1994. Written comments on the matters covered in the staff paper and the meetings that are received by March 4, 1994 will be considered along with comments made during the meetings. Comments received after this date will be considered if it is practical to do so.

ADDRESSES: The meetings will be held at the following locations: The Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852; The Holiday Inn, O'Hare, 5440 North River Road, Rosemont, IL 60018; The Comfort Inn at the Parwick Centre, 450 Memorial Drive, Chicopee, MA 01020. Written comments should be sent to Donald P. Cleary at the address given below.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 492–3936.

SUPPLEMENTARY INFORMATION: The purpose of the regional meetings is to gain the views of the States and other interested parties on how the NRC should treat need for generating capacity and alternative energy sources in its final rule on the environmental review for renewal of nuclear power plant operating licenses. The NRC published in the **Federal Register** proposed amendments to its environmental protection regulations, 10 CFR part 51, which would establish new requirements for the environmental review of applications to renew operating licenses for nuclear power plants (September 17, 1991; 56 FR 47016). Concurrently, the NRC published NUREG–1437, a draft Generic Environmental Impact Statement (GEIS) that contained the analyses which the NRC proposed to codify in part 51. The public comment period on the proposed rule, the GEIS, and other related documents closed on March 17, 1992. In commenting on the proposed rule and the draft GEIS, a number of States expressed dissatisfaction with the treatment of need for generating capacity, and alternative energy sources. The States' concerns involve provisions of the proposed rule that the States see as being in conflict with the traditional authority of the States to regulate electrical utilities with respect to questions of need, reliability, cost, resource options, and other non-safety aspects of nuclear power generation. The Commission instructed the NRC staff to develop options for responding to these State concerns. In developing the options the staff is to solicit the views of the States.

The staff is soliciting the views of the States through four regional meetings and a request for written comments. To facilitate discussions with the States the staff has prepared a paper, "Addressing the Concerns of States and Others Regarding the Role of Need for Generating Capacity, Alternative Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental Reviews for Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper," which may be either examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037, or obtained from Donald P. Cleary at the address provided above.

Each meeting will be conducted in a panel format with panelists representing those States that submitted comments on the treatment of need for generating capacity and alternative energy sources, other interested States, electric utilities, the NRC, and interest groups concerned with the economic regulation of electric utilities. All interested persons are invited to attend as observers and time will be scheduled to take questions and comments from the floor. The meeting minutes will be transcribed by a court reporter. Written comments on the matters covered in the staff paper and the meetings are invited. The public comment period will close on March 4, 1994.

Each meeting will begin at 10 a.m. and, with a 1 hour lunch break, will continue until 5 p.m. if participation warrants. Registration will be conducted one-half hour prior to the meeting.

Dated at Rockville, Maryland, this 11th day of January 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–1095 Filed 1–14–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 92N–0314]

Tamper-Evident Packaging Requirements for Over-The-Counter Human Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its tamper-resistant packaging requirements to require that all over-the-counter (OTC) human drug products marketed in two-piece, hard gelatin capsules be sealed. This proposal follows continuing tampering incidents

involving two-piece, hard gelatin capsules. The agency is also proposing a change in terminology throughout its regulatory program from "tamper-resistant" to "tamper-evident." In addition, FDA is soliciting comments on whether additional regulatory changes, such as packaging performance standards, may be necessary. These proposed amendments are part of the agency's continuing review of the potential public health threat posed by product tampering and are meant to address specific vulnerabilities in the OTC drug market and to improve consumer protection.

DATES: Written comments by March 21, 1994. FDA proposes that any final rule that may issue based on this proposal have an initial effective date of 1 year after its date of publication in the **Federal Register**. All OTC drug products marketed in two-piece, hard gelatin capsules that are initially introduced or initially delivered for introduction into interstate commerce on or after this date must be sealed according to the requirements of the final rule. In addition, FDA proposes a retail level effective date of 2 years after the date of publication of a final rule in the **Federal Register**. All two-piece, hard gelatin capsules subject to the final rule, including products held for sale at the retail level, must be sealed in compliance with these requirements by this date or be subject to regulatory action. FDA also proposes that any labeling changes necessary to reflect the adoption of "tamper evident" terminology be made effective 2 years after the date of publication of a final rule in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8049.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is proposing to amend its tamper-resistant packaging regulation for OTC drug products in § 211.132 (21 CFR 211.132). The regulation requires that all OTC drug products (except dermatologics, dentifrices, insulin, and throat lozenges) be in packaging designed to provide consumers with visible evidence of any tampering that has occurred. FDA first adopted these requirements in 1982 to respond to the public health emergency in which seven persons in the Chicago area died after taking cyanide-laced Extra-Strength Tylenol capsules (47 FR 50442, November 5, 1982). Investigations showed that the cyanide had been intentionally introduced into the capsules after they had reached the retail shelf. Although the product's packaging met all FDA requirements at the time, it was not designed so that tampering would leave visible evidence. The poisoning fatalities illustrated the risk that consumers of OTC drugs faced without such protective packaging. FDA met with industry experts to explore ways to reduce this risk and to develop specific recommendations for OTC drug packaging designs that would make malicious tampering more obvious. These recommendations formed the basis of the agency's initial regulatory approach.

The 1982 regulation required that most OTC drug products be packaged in a tamper-resistant package, which was defined in § 211.132(b) as packaging having an indicator or a barrier to entry that could reasonably be expected to provide visible evidence to consumers that tampering had occurred. In addition to meeting this general standard, § 211.132(b) required that the tamper-resistant feature be distinctive by design or use a barrier to entry that employed an identifying characteristic such as a logo. The regulation further required that OTC product labeling alert consumers to the specific packaging feature being employed (§ 211.132(c)). All requirements of this regulation were in effect by February 6, 1984.

FDA continued to monitor the effectiveness of its regulatory program and found that, while the program had resulted in significant improvements in protecting consumers from tampering harm, OTC products marketed in two-piece, hard gelatin capsules remained vulnerable to malicious tampering. In fact, all known fatalities from contaminated OTC drugs, including three deaths in 1986—4 years after the tamper-resistant packaging requirements were first imposed—were associated with this dosage form.

Recognizing the persistent vulnerability of the hard capsule, the agency amended its tamper-resistant packaging regulation in the **Federal Register** of February 2, 1989 (54 FR 5227), to require that OTC products marketed in two-piece, hard gelatin capsules be packaged using at least two tamper-resistant features, unless the capsules were sealed using a tamper-resistant technology (§ 211.132(b)(1) and (b)(2)). FDA concluded that an additional packaging feature would reduce the dangers posed by OTC drug tampering by making it more likely that the consumer would see signs of tampering when it occurred. This requirement went into effect on February 2, 1990.

Even with this extra level of regulatory protection, two-piece, hard gelatin capsules remain vulnerable to malicious tampering and have been implicated in the latest fatalities. In February 1991, two persons in the State of Washington died and another became gravely ill after ingesting counterfeit Sudafed capsules contaminated with cyanide. The capsules had been packaged using a number of tamper-resistant packaging features that met FDA requirements. The tampering was crudely done and left obvious signs: while both the counterfeit product and the Sudafed product were in two-piece, hard gelatin capsules, the counterfeit capsules were larger than the legitimate Sudafed capsules, lacked the company logo and "Sudafed" imprint, and lacked the blue gelatin band found on Sudafed capsules. In addition, the foil backing on the package's blister card had been cut, and lot numbers on the blister card did not match those on the carton. The contaminated capsules also contained a yellowish powder, rather than the white granules contained in Sudafed capsules.

The Sudafed package and dosage form met FDA's tamper-resistant standard, providing visible signs of tampering that were both numerous and conspicuous. The fact that physical harm from the tampering nonetheless occurred was of concern, and illustrated the need for a renewed focus on consumer education and involvement in the effectiveness of tamper-resistant or tamper-evident packaging. In response to this most recent incident, the agency convened a task force to review existing regulatory strategies and to consider what further steps could be taken. The task force also considered information provided by outside experts, including packaging scientists and representatives of drug manufacturing trade associations. A number of options were discussed, including banning the use of two-piece, hard gelatin capsules for OTC drug products or restricting their availability by requiring that they be kept behind the pharmacy counter. These discussions balanced the value of the hard capsule dosage form to consumers against its continued vulnerability to malicious tampering. Memoranda from these discussions are on display in the Dockets Management Branch (address above) and are available for inspection between 9 a.m. and 4 p.m., Monday through Friday.

During these discussions, FDA gave serious consideration to banning the use of two-piece, hard gelatin capsules, but has tentatively concluded that such capsules should remain available for several reasons. First, FDA believes that banning hard gelatin capsules because they have been associated with tampering may give consumers a false sense of security that tampering with other dosage forms could no longer occur. Second, FDA believes that a ban would deprive the public of a useful dosage form. The Nonprescription Drug Manufacturers Association (NDMA) [1] indicated that the two-piece, hard gelatin capsule can have certain features not provided by other dosage forms that are currently available. For example, many consumers prefer to take capsules, finding them easiest to swallow. In addition, some medications can only be formulated in the capsule dosage form, due to detrimental effects on active ingredients from tableting or other formulation processes. Hard gelatin capsules also may contain fewer inactive ingredients, which can cause allergic reactions in some individuals, than some tablet and oral liquid formulations. Moreover, the hard gelatin capsule dosage form is sometimes necessary to deliver timed-release medications. Given the potential benefits of capsules, FDA believes that, at this time, it is appropriate to seek to decrease the risks posed by product tampering through means other than banning two-piece, hard gelatin capsules.

This proposed rule is based on investigations and discussions surrounding the 1991 tampering fatalities, as well as FDA's ongoing review of the public health threat from OTC drug product tampering. The proposal suggests some specific regulatory measures for reducing the potential for tampering with the vulnerable hard capsule dosage form. It also presents additional ideas for improving the effectiveness of current policies directed against product tampering and invites public discussion and comment on these ideas. By proposing the regulatory changes and encouraging a dialogue on the subject of improving anti-tampering measures and involvement of the consumer, the agency hopes to increase protection of the public against malicious tampering.

[1] The NDMA position statement entitled "The Sale of OTC Medicines in Capsule Form Should Not Be Banned or Restricted" is on display in the Dockets Management Branch (address above) and is available for inspection between 9 a.m. and 4 p.m., Monday through Friday.

A. Description of the Proposed Rule

FDA is proposing to amend its tamper-resistant packaging regulation to decrease the potential for harm from tampering involving two-piece, hard gelatin capsules. FDA also proposes to take certain steps to focus the attention of all parties on the need to make consumers aware of the special packaging features that indicate that tampering has occurred. The proposed changes complement a number of other actions that FDA is taking both to improve consumer awareness and to encourage the development of better packaging technologies.

One proposed change would amend the current regulation that establishes specific requirements for OTC products marketed in two-piece, hard gelatin capsules. As noted, this dosage form has been subject to the most serious tampering incidents over the years. The regulation now requires that these products be packaged using a minimum of two tamper-resistant packaging features, unless the capsules are sealed by a tamper-resistant technology, in which case, one packaging feature is sufficient (§ 211.132(b)(1) and (b)(2)). Proposed revisions to § 211.132(b)(2) would require that any OTC drug product marketed in a two-piece, hard gelatin capsule be sealed using a technology that would provide evidence that the capsule has been tampered with after filling. (Some capsule sealing technologies are described in FDA's Compliance Policy Guide 7132a.17. [2]) The proposed rule would no longer require that such products be packaged in a container with two tamper-resistant packaging features. The proposed rule would require that the sealed capsules be in packaging employing a minimum of one tamper-resistant feature, the requirement that applies to all other affected OTC dosage forms. The agency believes that requiring OTC capsules to be sealed may decrease the likelihood that successful product tampering will occur with this dosage form. This proposed change would not apply to one-piece, soft gelatin capsules, also known as soft gels. FDA specifically requests comments on whether the proposed requirement to seal all two-piece, hard gelatin capsules would adversely affect any patient population or specific drug entity or drug class.

The agency is also proposing that the term used to describe the packaging requirements be changed from "tamper-resistant" to "tamper-evident." FDA believes that the term "tamper-evident" more accurately describes the role of packaging in reducing the likelihood of harm from tampering, and emphasizes the necessity of consumer involvement in the effectiveness of any packaging system designed to meet the requirements of the regulation.

The change in terminology is intended to underscore the view that no package design is tamper-proof. The packaging of the Sudafed capsules did not prevent the 1991 tampering incidents, although it met FDA requirements and the evidence of tampering was strikingly visible. The proposed adoption of "tamper-evident" terminology should remind all parties that the success of these regulatory initiatives depends significantly on consumer vigilance. The proposed rule would also revise § 211.132(c) to clarify the requirements for the tamper-evident packaging labeling statement. By alerting consumers to the particular tamper-evident packaging features used, the labeling statement plays a crucial role in the effectiveness of any tamper-evident packaging system. Consumers who are alerted and aware of all packaging features used are in the best position to detect the evidence of tampering that the package has been designed to provide.

Current § 211.132(c) states that each retail package "* * * is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package." Some firms have interpreted this as requiring the labeling statement to refer only to tamper-evident features on the external package. Proposed § 211.132(c) would clarify that, in order to alert consumers to the tamper-evident packaging features used, the labeling statement must identify all packaging features used to comply with proposed § 211.132(b)(1), including those on the secondary package, those on the immediate container or closure, and any capsule sealing technologies that are employed to meet the requirements of proposed § 211.132(b)(2).

The proposed rule would also revise § 211.132(b) and (c) to remove reference to OTC products in aerosol containers, which are inherently resistant to tampering, but not appropriately considered in a discussion of tamper-evident packaging.

The proposed rule would also amend § 211.132(a) and (b) to replace the term "throat lozenge" with "lozenge." FDA is making this change because the tamper-evident packaging requirements should apply to all lozenges, not just throat lozenges. The agency also notes that the

[2] Compliance Policy Guide 7132a.17 is available from the National Technical Information Service (NTIS), United States Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650.

proposed change is consistent with earlier tamper-resistant packaging regulations (see 48 FR 16658 at 16664, April 19, 1983).

B. Legal Authority

This proposal is authorized in part by sections of the Federal Food, Drug, and Cosmetic Act (the act) concerning imposition of requirements necessary to assure that drugs meet the requirements of the act for identity, strength, quality, and purity. These requirements may be imposed as current good manufacturing practice under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)) and in aid of other statutory requirements relating to product safety and integrity. (See, e.g., 21 U.S.C. 351(b) and (c) and section 701 (21 U.S.C. 371(a)) of the act.) This statutory authorization permits promulgation of requirements for container and package design that provide protection against intentional product adulteration by means of tampering.

Promulgating requirements for labeling statements alerting drug product consumers to tamper-evident features is authorized under the adulteration provisions in section 501 and under the provisions in sections 502 and 201(n) of the act (21 U.S.C. 352(c) and 321(n)). The labeling statements are necessary to assure the effectiveness of the tamper-evident features; without such statements the products would be adulterated. In addition, under section 502(c) of the act, products are misbranded if statements required under other authority in the act are omitted from the products' labeling. Moreover, under sections 201(n) and 502(a) of the act, products may be misbranded by reason of the omission of material facts about the products, such as the tamper-evident features. (See 47 FR 50442 at 50447, November 5, 1982, for additional discussion of the legal authority for requirements related to drug product tampering.)

II. Other Consumer Protection Initiatives

A. Consumer Education

The 1991 tampering fatalities made clear that the OTC drug supply is still vulnerable to malicious tampering. As noted, FDA's deliberations following these fatalities focused on reevaluating current strategies to reduce the likelihood of harm from tampering and looking at the role that FDA, industry, and consumers play in their success or failure. While the agency will consider whether additional changes to the regulations may be needed to reduce the risks posed by product tampering, FDA believes that further initiatives will increasingly focus on consumer education and involvement.

FDA has already taken steps to inform consumers about the need to be alert for drug product tampering. FDA has worked closely with NDMA to develop and disseminate public service announcements about tampering. These are being provided to general circulation magazines and other publications. In addition, the October 1991 issue of *FDA Consumer* contained an article entitled "Look Twice," which explains the danger posed by drug product tampering and the need for consumer vigilance. Similar information appears in materials cosponsored by FDA and NDMA including a brochure called "Buying Medicine?: Stop, Look, Look Again" and a video and audio tape on product tampering entitled "Take A Look," which has been distributed to the media. FDA is also considering sponsoring workshops around the country to inform the public about tamper-evident packaging and the safety of the OTC drug supply. FDA solicits comments and suggestions from the public on ways to improve this educational campaign.

B. Research Into Consumer Behavior

The regulatory strategies FDA has adopted have been based on certain assumptions about how consumers behave when buying and taking their OTC drug products. To choose the most effective measures to enable consumers to detect tampering, it is necessary to have more and better information about how consumers select, purchase, and use OTC drug products and how tamper-evident packaging and associated labeling affects their behavior. FDA is aware of some research in this area, including studies done at Michigan State University, Rutgers University, and other academic institutions. Although such research has provided useful starting points for discussions of tamper-evident packaging, FDA believes that further research is needed to permit the design of more effective packaging features and educational campaigns. FDA is interested in learning more about any current consumer research that is relevant to the concerns of this rulemaking. FDA is also willing to assist any industry group or other interested party in the design and development of research in this area.

C. Private Initiatives

As noted, the agency has taken several steps to encourage the use of safer packaging technologies. FDA believes that these steps can be complemented by actions of drug manufacturers and other interested persons. The agency initiatives in 1982 were taken with the knowledge that certain packaging technologies, including, for example, film wrappers, blister or strip packs, and heat shrink bands or wrappers, were available to drug manufacturers to reduce the risk of tampering. The agency notes that few new technologies have been added since 1982. The agency recognizes that no package is tamper-proof but believes that there are opportunities for innovations and for refinement of current designs to improve consumer protection. FDA encourages both individual and collective efforts in the OTC drug and packaging industry to devise better technologies.

FDA would also like to discuss with the drug industry and other interested persons the possibility of establishing performance standards for tamper-evident packaging. Such standards might be based on the probability that a consumer could detect evidence of tampering with a given packaging design. Compliance with the standards might be measured by studying the likelihood that a consumer would recognize signs of tampering within a specified amount of time. Where a packaging feature is to be used on a product targeted to or frequently purchased by a particular group of consumers, such as the elderly, the level of recognition might be determined using a representative number of the particular group.

Developing performance standards based, in part, on the behavior and reaction of consumers to product packaging would be challenging. FDA believes, however, that it is not an impossible task, and suggests that information from the research and development of package design from a marketing standpoint might be useful. Furthermore, the agency believes that any performance standards for tamper-evident packaging should be based on the latest behavioral and technological information available. Such state-of-the-art standards would give packaging engineers and manufacturers a benchmark for evaluating particular package designs, and would provide an incentive to improve the effectiveness of tamper-evident packaging to mirror technological progress in the field. The agency invites comments on the appropriateness of developing and requiring performance standards for tamper-evident packaging.

III. Economic Impact

FDA has carefully considered the economic impact of this proposed rule

and has determined that it requires neither a regulatory impact analysis, as specified by Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The agency believes that the proposed rule, if finalized, would generate costs that are well below the thresholds that would signify a major rule, and so the proposed rule does not require a regulatory impact analysis. The agency also finds that the proposed rule would not have a significant effect on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis.

Current FDA requirements for OTC drug packaging to protect the public from the threat of product tampering have been in place since 1982. This proposed rule would not change the scope or applicability of these requirements, but would only amend the requirements with regard to one OTC drug dosage form and impose a minor labeling change that would affect certain products.

This proposed rule may impose additional costs on manufacturers who choose to market their OTC drug products in two-piece, hard gelatin capsules instead of switching to a different dosage form, such as a soft-gel or liquid-gel capsule, or a caplet. The proposed rule would delete the current requirement that two-piece, hard gelatin capsules be packaged using two tamper-evident features, and would require instead that all such capsules be sealed and packaged using at least one tamper-evident feature. FDA believes that capsule sealing would make it more difficult to tamper with this dosage form without leaving visible evidence, and that any costs resulting from the rule would be small compared to public health benefits from this added measure of consumer protection.

The number of two-piece, hard gelatin capsule OTC products sold over the last few years has declined dramatically, with fewer than 50 such items currently listed with FDA. A review of those products indicates that from 75 percent to 90 percent are already sealed or "banded." Thus, FDA is aware of only a small number of OTC products still marketed as unsealed two-piece, hard gelatin capsules. Under the proposed rule, the few firms producing these products would have to choose between incurring costs for reformulating the product to a different dosage form or installing machinery needed to seal the two-piece, hard gelatin capsules. The affected firms would not face substantial added costs for lost product inventory because the proposed rule allows manufacturers 1 year and retailers 2 years after the date of publication of a final rule to effect the changes.

NDMA estimates that the approximate cost of a capsule sealing or banding machine ranges from $150,000 to $250,000. Assuming FDA's higher bound estimate that only 25 percent of the 50 listed, two-piece, hard gelatin capsule products are not currently sealed with an appropriate technology, then 12 products would need to be sealed or banded. If only one new capsule banding machine were needed per product, the total cost to the industry would range from $1.8 million to $3 million. An additional cost may occur if it is difficult for a company to integrate the sealing equipment into its capsule filling line. According to NDMA, some companies may find that this problem adds an extra cost of approximately 50 cents to 80 cents per 1,000 capsules. Nonetheless, for all but the smallest product lines, these costs would be a modest percentage of sales. The proposed rule would also change regulatory terminology from "tamper-resistant" packaging to "tamper-evident" packaging. This would affect a substantial number of firms because it would necessitate a labeling change under § 211.132(c) for all OTC products that now have the words "tamper-resistant" on their package. A small survey conducted by FDA found that approximately 60 percent of OTC drug product labels include the words "tamper-resistant." The remaining product labels include a description of tamper-resistant packaging features, but do not specifically use the words "tamper-resistant."

In 1986, NDMA estimated that about 70 percent of their members' 435 products, excluding private labelers, were affected by tamper-resistant packaging regulations. On the assumption that there were three shelf keeping units (SKU's) per product, this amounted to about 1,300 SKU's. Based on a 1986 survey of its members, NDMA had reported that the average labeling change cost per SKU was $3,000 to $4,000. The current proposal, however, would require a much simpler label change than was considered in that 1986 survey. Nonetheless, if the cost per SKU were assumed to be about $3,000, the total cost of changing 60 percent of these labels would be approximately $2.3 million (60 percent x 1,300 x $3,000). In addition, NDMA provided a preliminary estimate of $5 million for 15 larger private labeling companies. Sixty percent of this cost amounts to $3 million. Thus, the potential upper-bound cost imposed by the proposed labeling changes may amount to $5 to $6 million.

The actual cost of the labeling change would be significantly lessened by FDA's proposed effective date for the labeling change, which would give manufacturers up to 2 years from the date of publication of a final rule to make the required changes. The agency chose this timeframe to minimize the burden to industry of converting to "tamper-evident" terminology, based on information from NDMA that most product labels are routinely reprinted within an 18- to 24-month period. Thus, although FDA does not know the precise number of OTC product labels that are normally reprinted within a 2-year period, the labeling costs attributable to the proposed regulation would be minimal for most firms in this industry.

To summarize, the total one-time costs of this proposed rule would be the sum of the approximately $3 million to seal or band the remaining few two-piece, hard gelatin capsule products and the minimal costs needed to change the labeling on the products that currently read "tamper-resistant."

In addition to these regulatory changes, FDA has invited comments on other initiatives such as the development of better consumer education campaigns, research into consumer behavior with regard to OTC packaging and tamper-evident packaging, and the possibility of developing performance standards for tamper-evident packaging. Any of these programs, if adopted as regulatory requirements, could have significant economic importance. Before promulgating any final regulation, however, FDA intends to consider all relevant information on the economic consequences of these initiatives and reasonable alternatives. The agency solicits public comment on all aspects of both the costs and feasibility of all issues raised by this proposal, especially with respect to any impact on affected small businesses.

IV. Executive Order 12612—Federalism

Executive Order 12612 requires that Federal agencies carefully examine regulatory actions to determine if they would have significant federalism implications. FDA's tamper-resistant packaging regulations were issued with the intent that the regulations preempt State and local packaging requirements that are not identical to the Federal requirements in all respects (47 FR 50442 at 50447, November 5, 1992). The agency believes that the proposed changes would improve safeguards to protect consumers from tampering of all

OTC drug products, particularly those marketed as two-piece, hard gelatin capsules, and that the amendments, therefore, should eliminate the need for additional action at the State or local level. FDA invites comments on the adequacy of the proposed amendments in this regard.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Request for Comments

Interested persons may, on or before March 21, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. Proposed Effective Dates

FDA proposes that any final rule based on the proposed requirement that all OTC drug products marketed as two-piece, hard gelatin capsules be sealed be made effective 1 year after its date of publication in the **Federal Register**. All OTC drug products marketed as two-piece, hard gelatin capsules that are initially introduced or initially delivered for introduction into interstate commerce on or after the effective date must be sealed according to the requirements of the final rule or be subject to regulatory action. FDA also proposes a retail level effective date for this requirement of 2 years after the date of publication of a final rule in the **Federal Register**. After this date, all two-piece, hard gelatin capsule products held for sale (including stocks in retail stores) must be sealed according to the requirements of the final rule or be subject to regulatory action.

FDA also proposes that any labeling changes necessary to reflect the adoption of "tamper-evident" terminology be made within 2 years after the date of publication of a final rule in the **Federal Register**. Based on information from industry, FDA expects that most products subject to tamper-evident packaging requirements will have undergone routine labeling revisions within this timeframe.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 211 be amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 211.132 is amended by revising the section heading, by removing in paragraph (a) the word "throat", by removing in paragraphs (a) and (d)(2) the words "tamper-resistant" and adding in their place the words "tamper-evident", and by revising paragraphs (b), (c), and the second sentence in the introductory text of paragraph (d) to read as follows:

§ 211.132 Tamper-evident packaging requirements for over-the-counter (OTC) human drug products.

* * * * *

(b) *Requirements for tamper-evident package.* (1) Each manufacturer and packer who packages an OTC drug product (except a dermatological, dentifrice, insulin, or lozenge product) for retail sale shall package the product in a tamper-evident package, if this product is accessible to the public while held for sale. A tamper-evident package is one having one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of successful tampering and to increase the likelihood that consumers will discover if a product has been tampered with, the package is required to be distinctive by design or by the use of one or more indicators or barriers to entry that employ an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the packaging cannot be duplicated with commonly available processes. A tamper-evident package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-evident feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(2) In addition to the tamper-evident packaging feature described in paragraph (b)(1) of this section, any two-piece, hard gelatin capsule covered by this section must be sealed using an acceptable tamper-evident technology.

(c) *Labeling.* (1) In order to alert consumers to the specific tamper-evident feature(s) used, each retail package of an OTC drug product covered by this section (except ammonia inhalant in crushable glass ampules or containers of compressed medical oxygen) is required to bear a statement that:

(i) Identifies all tamper-evident feature(s) and any capsule sealing technologies used to comply with paragraph (b) of this section;

(ii) Is prominently placed on the package; and

(iii) Is so placed that it will be unaffected if the tamper-evident feature of the package is breached or missing.

(2) If the tamper-evident feature chosen to meet the requirements in paragraph (b) of this section uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

(d) * * * A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from the Tamper-Evident Packaging Rule." * * *

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Dated: September 13, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1049 Filed 1–14–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 788; Re: Notice No. 785, 93F020T]

RIN 1512–AB22

Multistate Appellations of Origin for Contiguous States

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Reopening of comment period.

SUMMARY: This document reopens the comment period for Notice No. 785, a notice of proposed rulemaking (NPRM) published in the **Federal Register** on December 14, 1993 [58 FR 65295]. In Notice No. 785, the Bureau of Alcohol, Tobacco, and Firearms (ATF) proposed to amend its regulations to liberalize the requirements for using a multistate appellation of origin on a wine label. The current regulations provide that a wine may bear a multistate appellation of origin only where the wine is in conformance with the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation. The proposed amendment would provide an exception where State laws and regulations do not authorize the use of a multistate appellation of origin which includes that State for wines sold within its boundaries.

The comment period is being reopened based on requests from two wine industry associations.

DATES: Written comments must be received on or before March 21, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington DC 20091–0221, Attn: Notice No. 785. Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927–8602.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1993, ATF published Notice No. 785, soliciting comments from the public and industry on a proposal to amend 27 CFR 4.25a(d)(3) to make it more practical to use a multistate appellation of origin on a wine label. This proposal was based on a petition by Stimson Lane Ltd., a company with wineries located in Washington and California.

ATF has received written requests from the Wine Institute and the American Vintners Association (AVA) for additional time to review and analyze the issues raised in this rulemaking proceeding. Since the Wine Institute and AVA are directly impacted by issues raised in Notice No. 785, ATF believes that reopening the comment period is justified. Therefore, the comment period is being reopened until March 21, 1994.

Disclosure

Copies of this notice, Notice No. 785, and any written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, Washington, DC 20226.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Authority: This notice is issued under the authority in 27 U.S.C. 205.

Signed: January 11, 1994

Daniel R. Black,

Acting Director.

[FR Doc. 94–1089 Filed 1–14–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF JUSTICE

28 CFR Part 68

[Order No. 1839–94]

Executive Office for Immigration Review; Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend 28 CFR part 68, which contains the rules of practice and procedure for administrative hearings conducted to enforce sections 274A, 274B, and 274C of the Immigration and Nationality Act ("INA"). Sections 274A and 274B were added to the INA by the Immigration Reform and Control Act of 1986 ("IRCA"), and were amended by title V of the Immigration Act of 1990 ("IMMACT"), which added section 274C to the INA. These amendments are necessary to bring the practices and provisions established in part 68 into conformity with the provisions of the INA. Specifically, these amendments will clarify the amount of time a party has to appeal to the United States Court of Appeals an Administrative Law Judge's order in a section 274A or a section 274C proceeding.

DATES: Comments must be received by February 17, 1994.

ADDRESSES: Please submit written comments to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305–0470.

SUPPLEMENTARY INFORMATION: Sections 274A, 274B, and 274C of the INA require that hearings be held before Administrative Law Judges in cases involving allegations that a person or other entity has:

(1) Hired, or recruited or referred for a fee, for employment in the United States an alien knowing that the alien is unauthorized to work in the United States; or has so hired or referred or recruited for a fee, any individual when the hiring person or entity fails to comply with the employment eligibility verification requirements (8 U.S.C. 1324a(a)(1));

(2) Continued to employ an alien in the United States knowing that the alien is or has become unauthorized with respect to such employment (8 U.S.C. 1324a(a)(2));

(3) Imposed, in the hiring, recruiting, or referring for employment of any individual, any requirement that the individual post a bond or security, pay or agree to pay any amount, or otherwise guarantee or indemnify against any potential liability under 8 U.S.C. 1324a for unlawful hiring, recruiting or referring of such individual (8 U.S.C. 1324a(g)(1));

(4) Engaged in unfair immigration-related employment practices (8 U.S.C. 1324b); or

(5) Knowingly participated in activities involving fraudulent creation or use of documents for the purposes of satisfying, or complying with, a requirement of the INA (8 U.S.C. 1324c).

On November 24, 1987, the Department of Justice published an interim final rule establishing

administrative practices and procedures to implement sections 274A and 274B of the INA. 52 FR 44972. After receiving comments, the Department published the final rule on November 24, 1989. 54 FR 48593. That rule governed all cases properly brought before an Administrative Law Judge that complied with the requirements of the INA. Then, on November 28, 1990, Congress enacted the Immigration Act of 1990, which amended sections 274A and 274B of the INA, and added section 274C. These amendments necessitated certain revisions to the practices and procedures established by part 68, which were set forth in an interim rule with request for comments, published October 3, 1991. 56 FR 50049. After receiving comments, the Department published the final rule on December 7, 1992. 57 FR 57669. The final rule, however, did not distinguish between the time the Administrative Law Judge "enters" an order and the time an order is "issued". This distinction is critical in clarifying the amount of time a party has to appeal an Administrative Law Judge's order in a section 274A or a section 274C proceeding to the United States Court of Appeals. Based upon experience gained by the Office of the Chief Administrative Hearing Officer in implementing the hearing procedures and the statutory language regarding the Chief Administrative Hearing Officer's review authority found at section 274A(e)(7), it is proposed that § 68.2 paragraph (i) be revised to reflect the reference made to the definition of "entry" in the revised definition of "issued" at § 68.2(k), and that § 68.2 paragraph (k) be amended to account for the thirty (30) days the Chief Administrative Hearing Officer has to modify or vacate an Administrative Law Judge's order in a section 274A or 274C proceeding after the Administrative Law Judge enters the order.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612. The Attorney General has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

For the reasons set forth in the preamble, it is proposed that 28 CFR part 68 be amended as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

1. The authority citation for part 68 will continue to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

2. Section 68.2 paragraphs (i) and (k) would be revised to read as follows:

§ 68.2 Definitions.

* * * * *

(i) *Entry* as used in section 274B(i)(1) of the INA and § 68.2(k) means the date the Administrative Law Judge signs the order;

* * * * *

(k) *Issued* as used in section 274A(e)(8) and section 274C(d)(5) of the INA means thirty (30) days subsequent to the entry of an order or, if the Chief Administrative Hearing Officer vacates or modifies the order, the date the Chief Administrative Hearing Officer signs such vacation or modification.

* * * * *

Dated: January 6, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–1039 Filed 1–14–94; 8:45 am]

BILLING CODE 1531–26–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 75

Drug Free Schools and Communities Act Regional Centers Grant Program

AGENCY: Department of Education.

ACTION: Waiver of a rule.

SUMMARY: The Department proposes to waive the rule at 34 CFR 75.261 in order to extend the project period under the Drug-Free Schools and Communities Act (DFSCA) Regional Centers Program from 48 months to 60 months. This action will allow services under this program to continue uninterrupted, and will result in the awarding of 12-month continuation awards to each of the five existing grantees, using fiscal year (FY) 1994 funds.

DATES: Comments must be received by February 17, 1994.

ADDRESSES: Comments should be sent to the Division of Drug-Free Schools and Communities, U.S. Department of Education, 400 Maryland Avenue, SW., room 2123, Washington, DC, 20202–6439.

FOR FURTHER INFORMATION CONTACT: Kimberly C. Light, Division of Drug-Free Schools and Communities. Telephone: (202) 401–1599. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Regional Centers Program is authorized by sections 5111(a)(1) and 5135 of the DFSCA, which is part of the Elementary and Secondary Education Act (ESEA). Appropriations for the Regional Centers Program were authorized through September 30, 1993 by the DFSCA. Section 414 of the General Education Provisions Act (GEPA) authorizes an automatic extension of the DFSCA through FY 1994 (September 30, 1994). The Congress is considering reauthorization of the DFSCA, but final action on the reauthorization is not expected until late in FY 1994.

In FY 1990, the Department awarded cooperative agreements for five Regional Centers to provide training and technical assistance services in drug education and prevention to State educational agencies, local educational agencies, and institutions of higher education. The centers were each given a project period of 48 months, based on the project period announced in the Friday, September 15, 1989, **Federal Register**. Since FY 1990, these centers have been maintained through continuation awards in three subsequent fiscal years (FY 1991, FY 1992, and FY 1993). Each center has received approximately $3 million per year.

Based on the automatic extension authorized under section 414 of GEPA, projects authorized under sections 5111(a)(1) and 5135 of the DFSCA can be funded in FY 1994 as well. Any funding after FY 1994 would be dependent on future Congressional action with no guarantee that projects funded under the current authorization could be supported.

If a new competition under the existing legislation were held in FY 1994, the projects could only be funded

for a limited project period of 12 months. In the past, it has taken new centers up to a year to "start up," given the scope and complexity of the services they provide and the time it takes to hire qualified staff and develop plans and relationships that are responsive to clients in their regions. The Assistant Secretary believes that starting new centers in FY 1994 for only 12 months would severely disrupt the quality and level of center services. Holding a competition in FY 1994 would impose considerable costs at the Federal level without a guarantee that the new centers would be able to provide the technical assistance necessary to school districts as the Department moves to implement Goals 2000 and the new ESEA.

Therefore, the Assistant Secretary proposes, in the best interests of the Federal Government, to extend the current projects for one additional year with the Federal Government bearing the cost. This proposal is consistent with the President's mandate to implement cost-effective, cost-saving initiatives. In order to make these cost extensions, the Assistant Secretary must waive the regulation at 34 CFR 75.261, which permits extensions of projects only at no cost to the Federal Government. In consideration of the foregoing, the Assistant Secretary proposes to waive 34 CFR 75.261 as applied to the DFSCA Regional Centers Program during FY 1994.

Regulatory Flexibility Act Certification

The Assistant Secretary certifies that this waiver would not have a significant economic impact on a substantial number of small entities. The limited number of entities affected by this waiver are current centers and potential applicants under a new competition with a limited project period of 12 months.

Paperwork Reduction Act of 1980

This waiver has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

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 this 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 this waiver of 34 CFR 75.261 under the DFSCA Regional Centers Program. All comments submitted in response to this proposed one-year waiver will be available for public inspection, during and after the comment period, in Room 2123, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except on Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether this waiver 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 Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

Dated: January 10, 1994.

(Catalog of Federal Domestic Assistance Number 84.188A Regional Centers Program)

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 94–1117 Filed 1–14–94; 8:45 am]

BILLING CODE 4000–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 253, 254, 255, 256, 257, 258, 259, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, and 311

[Docket No. RM94–1]

Copyright Arbitration Royalty Panels; Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking and announcement of open meeting.

SUMMARY: On December 22, 1993, the Copyright Office of the Library of Congress in accordance with the Copyright Royalty Tribunal Reform Act of 1993, adopted in their entirety the rules and regulations of the former Copyright Royalty Tribunal. The Office stated at that time that it was adopting the rules on an interim basis, and that it would soon commence a rulemaking proceeding to update and revise those rules. Today's action commences that proceeding by publishing a set of proposed rules and announcing a public meeting to discuss the proposed regulations.

DATES: Written comments should be received on or before February 15, 1994. The open meeting will be held on February 1, 1994.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, room LM–407, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by a private messenger service.

The meeting will be in Hearing Room 921, 9th Floor, 1825 Connecticut Avenue, NW., Washington, DC beginning at 10 a.m. Parties need not inform the Copyright Office of their intention to participate.

FOR FURTHER INFORMATION CONTACT: Marybeth Peters, Acting General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540, (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Office of the Library of Congress is proposing new regulations under 17 U.S.C. 802(d), supplementing and superseding the former Copyright Royalty Tribunal's rules and regulations which were adopted on December 22, 1993. 58 FR 67690 (1993). The Office is also proposing a course of action for dealing with rate adjustment and distribution matters which were pending before the Tribunal at the time of its elimination. A meeting open to the public will be held on February 1, 1994 at 10 a.m. to discuss all issues related to today's publication.

I. Background

On December 17, 1993, the President signed into law the Copyright Royalty Tribunal Reform Act of 1993 ("Reform Act"). Public Law No. 103–198, 107 Stat. 2304. Effective immediately upon enactment, the Reform Act amends the Copyright Act, 17 U.S.C., by eliminating the Copyright Royalty Tribunal and transferring its responsibilities and duties to ad hoc Copyright Arbitration Royalty Panels (CARPs), to be administered by the Library of Congress and the Copyright Office. As directed by the new act, the Librarian of Congress will convene Copyright Arbitration Royalty Panels for the purpose of

adjusting rates and distributing royalties. See 17 U.S.C. 111, 115, 116, 118, 119 and chapter 10.

Immediately upon enactment of the Reform Act the Copyright Office issued a notice adopting the full text of the former Tribunal's rules and regulations on an interim basis. 58 FR 67690 (1993). This action was required by new section 802(d) of the Copyright Code, which provides:

> Effective on the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, the Librarian of Congress shall adopt the rules and regulations set forth in chapter 3 of title 37 of the Code of Federal Regulations to govern proceedings under this chapter. Such rules and regulations shall remain in effect unless and until the Librarian, upon the recommendation of the Register of Copyrights, adopts supplemental or superseding regulations under subchapter II of chapter 5 of title 5.

17 U.S.C. 802(d). The Copyright Office made only slight technical changes to the former Tribunal's rules, stating that it intended to review and revise the rules during the course of a future rulemaking. 58 FR at 67690 (1993). The Office now commences that proceeding to conform the rules to the new system of Copyright Arbitration Royalty Panels.

II. Matters Pending Before the Former Tribunal

A major issue facing the Copyright Office of Library of Congress at the outset of today's proposed rulemaking is the resolution of rate adjustments and distributions, and related matters, which were pending before the Copyright Royalty Tribunal at the time of its demise. Some of these proceedings, such as distribution of 1990 cable royalties, had already commenced hearings, while others were awaiting determination of controversies or rulings on procedural issues. Since the Office is proposing new rules and regulations which will govern and shape rate adjustment and distribution proceedings under the new system, the Office must first decide how to handle the Tribunal's old business.

The Copyright Office is of the firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal. The Reform Act represents a radically different approach for adjusting rates and distributing royalties for the copyright compulsory licenses, and is not an absorption of one agency by another. The Tribunal is replaced, not moved or merged, by ad hoc Arbitration Panels which are to be administered by the Copyright Office of the Library of Congress. The Office is therefore not simply picking up where the Tribunal left off, but is responsible for administering a completely new system of ratemaking and distribution.

Because the Copyright Office is not a successor agency, it is our preliminary finding that all proceedings pending before the Tribunal at the time of its elimination were terminated at that time. In other words, the Office will not continue to conduct and handle matters and proceedings which were before the Tribunal, but will require that all parties which had pending business before the Tribunal at the time of its elimination must, if they desire the matter to receive further consideration, file the matter anew before the Copyright Office. Thus, for example, the Librarian will not automatically convene a Copyright Arbitration Royalty Panel to pick up where the proceedings left off for the 1990 cable distribution, but will require the parties who participated in that proceeding to refile their case with the Office in accordance with the rules and regulations proposed below. While the Office understands that the parties may be somewhat burdened by duplicating at least a portion of their case, it is necessary that the Office wipe the slate clean and, for purposes of the operation of the proposed rules and administrative efficiency, begin anew the matters pending before the former Tribunal.

An issue related to the termination of proceedings pending before the former Tribunal and the requirement of new filings is the legal effect of orders and decisions issued by the Tribunal during those proceedings. New section 802(c) of the Copyright Act states that Copyright Arbitration Royalty Panels "shall act on the basis of * * * prior decisions of the Copyright Royalty Tribunal * * *", but does not bind the Panels to those decisions; the effect of those decisions on the Librarian or the Copyright Office is not mentioned.

The Copyright Office has no intention of questioning or reopening matters decided by the former Tribunal with respect to ongoing proceedings. However, we understand that the termination of pending Tribunal proceedings and the requirement of new filings will likely raise again some of the issues previously decided by the Tribunal. The Copyright Office of the Library of Congress makes a preliminary finding that, while we will look to the Tribunal's decisions and orders for guidance, neither the Office nor the Copyright Arbitration Royalty Panels are legally bound by those decisions.[1] All legal issues related to proceedings pending before the Tribunal at the time of its elimination may therefore be resubmitted to the Copyright Office and, where appropriate, to the Arbitration Panels for consideration.

III. Proposed Rules

Revising the former Tribunal's rules is a particularly complicated task, given the division of authority between the Copyright Arbitration Royalty Panels and the Copyright Office of the Library of Congress. Under the old law the Tribunal acted as a single autonomous body; in contrast, the distribution of royalty fees or the setting of royalty rates under the new legislation will often be a multistage process. For example, in order to adjust a compulsory license royalty rate, the Librarian of Congress, with the recommendation of the Register of Copyrights, must appoint an arbitration panel and then review the panel's report and, with the Register's recommendation, either approve the report or substitute his/her own judgment. This new system renders many of the former Tribunal's rules and regulations inappropriate, and requires creation of a new framework to allocate responsibilities.

At the same time, the Library and the Copyright Office recognize the desirability of preserving as much continuity as possible between the old and new systems.[2] The proposed rules are based upon and seek to track the structure and organization of the former Tribunal's rules.

The Library and Copyright Office have thoroughly reviewed the entire body of the former Tribunal's rules and regulations and considered the extent to which they fit with the new bifurcated system of ad hoc Arbitration Panels administered by the Library and the Office. The results are today's proposed rules, which are intended to preserve the essential elements of the Tribunal's system while taking into account the requirements and complexities presented by an independent arbitration process.

At the outset a technical change is required by the regulations governing the Code of Federal Regulations itself; the former Tribunal's rules are being moved from Chapter III to Chapter II of Title 37, CFR. Chapter III is repealed, and Chapter II is restructured to accommodate the new body of regulations. Chapter II, which until now has contained five individual parts

[1] The Copyright Office acknowledges that it is of course bound by rate adjustments and distributions that the Tribunal had conducted and concluded before its elimination. Thus, for example, the Office will not entertain any petitions to reexamine cable distributions for years earlier than 1990.

[2] The need for continuity is underscored by the Reform Act's instruction that the Tribunal's rules be fully adopted upon enactment, to be later amended or superseded. See 17 U.S.C. 802(d).

(Parts 201–204 and 211), will be divided into two subchapters. Subchapter A will contain the five original parts of Chapter II, and new Subchapter B will contain the entire body of the former Tribunal rules, along with today's proposed changes. And future rule changes or additions bearing upon the Copyright Arbitration Royalty Panels will appear in subchapter 8 of Chapter II, 37 CFR.

The part numbers of the rules generally track the Tribunal's original structure (parts 301–311), and are redesignated parts 251–259 of the Copyright Office's rules. Two parts of the Tribunal's former rules, parts 303 and 305 relating to jukebox performances, are being repealed since their relevance has been eliminated by the Reform Act's repeal of the jukebox compulsory license.

The main task of today's proposed rulemaking is to provide the substantive changes in the former Tribunal's rules necessary to implement the Reform Act and to create a workable and efficient system for adjusting royalty rates and distributing royalties. The following is a part-by-part summary of the proposed changes.

A. Part 251—Copyright Arbitration Royalty Panels Rules of Procedure

Part 251 is a proposed revision of part 301 of the former Tribunal's rules, which covered most of the Tribunal's operating procedures and rules of practice. This is the part that is in greatest need of revision, since many of the rules are inappropriate to govern the new system of ad hoc Arbitration Panels. The following summarizes the proposed changes in the various subparts of part 251.

1. Subpart A—Organization

Subpart A of part 251, entitled "Organization" and describing the composition of the Copyright Royalty Tribunal, was rendered superfluous by the Reform Act. Since it is necessary to create a completely different organizational scheme to implement the new system, we are planning to repeal all of subpart A and to substitute completely new provisions.

Official Address. Part 251.1 provides a single official address for all proceedings and actions conducted under subchapter B. Establishment of an official address is important, since many sections of subchapter B refer to this section or require documents to be filed at this address, including all royalty claims, requests for information, public access to documents, payments of Arbitration Panel costs, and motions, objections, and records filed with the Panels. Moreover, since all records submitted to the Copyright Office, to the Library, and to the CARPs are, with limited exceptions, available to the public for inspection and copying, a single address is required to assure that all documents will be assembled in a single location for the convenience of those wishing to inspect them. We also believe that providing a single permanent repository for all documents created and submitted under subchapter B is not only important, but required.

All this may seem self-evident, but there is a problem here. Unlike the proceedings of the Tribunal, arbitration proceedings will not necessarily take place at a single location, within the Library of Congress or elsewhere. There may be incentive in particular cases for parties to deliver filings directly to the actual location where the CARP is meeting, but we believe it would be a mistake to allow entire filings to go to locations different from the mailing address specified in these proposed regulations. Any possible advantages of such a system to the parties or the Panels would be outweighed by the dangers of confusion among parties to different proceedings and possible uncertainties and difficulties in mail receipt and delivery. Since individuals' rights often depend on the timely filing and delivery of papers, the guarantee of proper handling can only be afforded by delivery to a single address in the Copyright Office of the Library of Congress.

At the same time, while section 251.1 creates a single official address, section 251.44 provides the parties flexibility in submitting documents and filing papers. In cases where an Arbitration Panel is conducting a hearing, the arbitrators are directed to establish requirements permitting delivery of filings directly to them, as long as one copy of the filing is delivered to the Copyright Office at its official address.

Purpose of the CARPs. Section 251.2 describes the purpose of the Copyright Arbitration Royalty Panels: to make rate adjustments and/or royalty distributions for the cable (17 U.S.C. 111), mechanical (17 U.S.C. 115), jukebox (17 U.S.C. 116), public broadcasting (17 U.S.C. 118), satellite carrier (17 U.S.C. 119) and digital audio recording devices and media (17 U.S.C. chapter 10) licenses. The jurisdiction of the Copyright Arbitration Royalty Panels is more limited than that of the Copyright Royalty Tribunal which, for example, had authority to adjust the royalty maximum for digital audio recording devices. This adjustment is now the province of the Librarian. *See* 17 U.S.C. 1004(a)(3). There are also certain arbitration procedures in the Copyright Act which are not within the jurisdiction of the CARPs. *See* 17 U.S.C. 119 and 1010.

List of Arbitrators. The Reform Act provides that the selection of arbitrators for a Royalty Panel must be made from "lists provided by professional arbitration associations." 17 U.S.C. 802(b). Sections 251.3 and 251.4 govern the creation and use of those lists. Before the beginning of each year (and, in the case of the current year of 1994, before March 1), any professional arbitration association or organization may submit a list of its member arbitrators who would be qualified to serve on a Copyright Arbitration Royalty Panel. Specific information is required with respect to each person whose name is submitted, including current and past employment, educational background, and a description of the facts and information that would qualify the person to serve as an arbitrator. After receiving the lists, there will be an initial screening process in which the Librarian will determine: 1) if the proposed person meets the necessary qualifications to serve as an arbitrator; and 2) if that person can reasonably be expected to be available during that calendar year. The names of persons meeting the requirements will be published in the **Federal Register** at the beginning of each year (in the case of 1994, by March 1), and this publication will serve as the master list from which the Librarian can select names for any arbitration proceeding commencing in that calendar year.

Objection Procedure. The Librarian will screen the master list, and there is also a procedure for objection. The objection procedure is confined to the period before an individual arbitration proceeding begins, and is limited to the parties participating in that proceeding. In the case of rate adjustment proceedings, parties may file their objections during the 90-day "cooling off" period following the filing of petitions for adjustment. *See* § 251.63. In the case of distribution proceedings, objections must be filed during the precontroversy discovery period specified by § 251.45(a). Objections must clearly spell out the facts and reasons for disqualification of persons on the arbitrator list, and the Librarian will consider them during the selection process for the first two arbitrators. Once the Librarian has made his selections, the objections will be made available to the two arbitrators to assist them in their selection of the third arbitrator. No peremptory objections will be allowed.

Qualifications of the Arbitrators. Section 251.5 describes the

qualifications a person must have to serve as an arbitrator. We have deliberately avoided adopting an extensive and specific list of qualifications on the theory that the results of a long, overly-particularized list of qualifications would likely result in a homogeneous Panel, and that the Librarian should be able to choose from persons of diverse backgrounds and skills. The Reform Act requires that an arbitrator have experience in conducting arbitration proceedings, and experience in settling disputes. The only two qualifications the Office has added are membership in a bar association and ten or more years of legal practice. Since the arbitration process contemplated by the Reform Act often resembles an adjudicatory procedure more than a traditional arbitration, the Office felt that it was necessary for arbitrators to be lawyers with a fair amount of experience as practitioners. The area of practice is not specified; we believe that a background in copyright, though helpful, is not necessarily indispensable to serving as an arbitrator. Keeping the number of qualifications to a minimum should produce a diversified group of individuals to serve as arbitrators with the necessary legal training and experience to accomplish the task efficiently and effectively.

Selection Process. Section 251.6 describes the selection process for an arbitration panel, restating the process described in the Reform Act. *See* 17 U.S.C. 802(b). The section requires the chairperson to act according to the majority wishes of the panel. There is also a provision regarding substitution of arbitrators who, after selection, for some reason become unable to continue service. In that event, the Librarian is directed to select a replacement promptly unless hearings have already begun in the proceeding. If hearings have begun, the remaining arbitrators or arbitrator would constitute the quorum necessary to render a determination.

Division of Authority between Librarian and CARP. Section 251.7 underscores the division of authority between the Librarian and the Royalty Panels. The Panels are limited by the statute to making determinations in individual and separate proceedings necessary to settling a controversy over royalty rates or distributions. Although given authority to issue orders governing the conduct of the proceedings, the Panels do not have rulemaking authority to amend or otherwise alter these rules and regulations when they are issued in final form.[3] Furthermore, since the Panels are not independent agencies, they have no authority to publish materials in the **Federal Register**. Because the Panels are considered a part of the Copyright Office and the Library of Congress, any orders and rulings of the Panels that are to be published must be issued under the auspices of the Office and the Library.

2. Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

Although the Government in the Sunshine Act, Public Law No. 94–409, 90 Stat. 1241, does not apply to Copyright Arbitration Royalty Panels, since CARPs are not an "agency or agencies," the Copyright Office believes that the provisions of the Act should apply to the conduct of meetings held by the arbitrators. This Subpart, therefore, tracks the procedures governing open and closed meetings which the former Tribunal adopted and followed with only a few changes.

Section 251.11 states that all meetings of a Copyright Arbitration Royalty Panel shall be open to the public unless otherwise specified. Notice of the anticipated schedule of the hearings will be placed in the **Federal Register** at least 7 days before the meeting. As amendments to the schedule are made, every practicable effort will be made to keep the public informed. Section 251.12 provides for public and media access to open meetings, adopting the former Tribunal's rules *in toto*.

Sections 251.13 to 152.16 prescribe the procedures to be followed in closed meetings, adopting virtually all of the former Tribunal's rules. Section 251.13 drops the requirement of closed meetings for internal personnel matters, since the Panels are without authority to hire or maintain personnel, but it adds to the discretion of the Panel to go into closed session to deliberate on a motion or objection raised orally at hearing. Section 251.16 directs that transcripts of closed meetings shall be kept at the Copyright Office, which is the official address for all arbitration proceedings.

3. Subpart 3—Public Access to and Inspection of Records

As in subpart B, the copyright Office is proposing in subpart C to adopt the former Tribunal's rules with respect to public access to and inspection of records, but with some important changes. The range of documents available to the public is expanded. Section 251.21 provides that, with limited exceptions, all records of the Copyright Arbitration Royalty Panels, and also those of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for public inspection and copying. Thus, for example, rulings or decisions of the Librarian made before the convening of an Arbitration Panel would be publicly available.

The same difficulties raised by adoption of a single official address, as discussed above, also arise with respect to the location of documents. While all filings with a CARP required by the proposed rules must be submitted through the Copyright Office, certain documents other than filings may, during the course of a proceeding, be in the sole possession of a Panel. Example are a document admitted into evidence during the course of a hearing to impeach the testimony of a witness, or the transcript of an ongoing proceeding. Section 251.22 therefore specifies that all documents and records in the sole possession of a Copyright Arbitration Royalty Panel and not required to be filed with the Copyright Office may be maintained by the chairperson at the location of the hearing, or at a location specified by the Panel. All requests for access, however, must be directed to the Copyright Office, and not the Arbitration Panel. In the case of documents solely in the possession of the Panel, the Copyright Office shall made arrangements to allow the person making the request to inspect and copy them. The schedule of fees for services of this sort are those currently charged by the Copyright Office for like services.

Because the Copyright Office already has its own Freedom of Information Act and Privacy Act guidelines, see 37 CFR parts 203 and 204, it is not adopting the former Tribunal regulations related to those Acts. The Office acknowledges that some adjustments to those rules may be required by the peculiarities of the Copyright Arbitration Royalty Panel system, but we believe there should be some practical experience before we identify any necessary changes.

[3] Section 251.42 allows an individual Panel to waive or suspend the rules of subchapter B for purposes of the proceeding. In the cases where Subchapter B does not prescribe a rule governing a particular question, the Panel, in accordance with 17 U.S.C. 802(c), may adopt its own rule for purposes of that proceeding. This provision is designed to give a Panel some flexibility in executing its duties with respect to the facts of its case. It is not, however, a grant of rulemaking authority, and any waiver, suspension or adoption of a rule has effect only on the course of that proceeding and in no way affects the rules and regulations of this subchapter or their application to other proceedings. It is expected that each Panel will follow these rules and apply them in a way that produces a just and equitable proceeding.

4. Subpart D—Standards of Conduct [4]

The Office is not proposing any regulations at this time, but as part of this proceeding we are inquiring as to standards of conduct that should apply to the arbitrators.

5. Subpart E—Procedures of Copyright Arbitration Royalty Panels

As with so many of the rules of this subchapter, the new bifurcated system of the Reform Act requires some changes in the former Tribunal's rules governing the conduct of proceedings. Nevertheless, although consequential adjustments are needed, we believe that the over-all system of procedures long used by the Tribunal in rate adjustment and distribution proceedings have served the public interest well and should be preserved. Maintaining the Tribunal's system to the extent possible should reduce the learning process for parties that have appeared before the former Tribunal for many years and should also, we hope, avoid some confusion.

Application of CARPs Procedures and Practice. For the most part the hearing procedures and motions practice applicable to the CARPs are carried over from those of the former Tribunal. Section 251.40 specifies that the procedural rules of this subpart E apply only to the Copyright Arbitration Royalty Panels and not to the actions of the Librarian or the Copyright Office, unless otherwise expressly provided in this subpart. The section also states that subpart E only applies to CARPs, and not to other arbitration proceedings under the Copyright Code. The Office is not statutorily required to apply these rules to other arbitration proceedings. Although it is possible that some or all of these rules may ultimately be adopted for other arbitration purposes; the statement clarifies the issue as of now and grants the Office flexibility in making future decisions on the point.

Formal Hearings and Other CARP Proceedings. Section 251.41 direct the Panels to conduct formal hearings for rate adjustment and royalty distribution proceedings. All parties intending to participate in a hearing must file a notice of their intention to do so. The Panels are also allowed to conduct other proceedings in the exercise of their basic functions, subject to section 251.7. For example, in the course of a distribution controversy, a legal issue may arise which requires resolution before the proper distribution can be determined. The Panel could conduct a proceeding to resolve that issue, which would be part of its function in determining the distribution. It may also happen that resolution of the legal question will permit the parties to the proceeding to settle their differences, thereby avoiding the need for a Panel distribution determination. The Panel, however, is still subject to section 251.7, and could not conduct a rulemaking proceeding affecting any provisions of subpart E. Section 251.41 also recognizes that, in the interest of reducing the expense of litigation, some parties may wish to have their royalty entitlement or rate determined solely by written submissions, and a procedure for petitioning the Librarian to have a "paper" proceeding is provided.

Suspension or Waiver of Rules; Ad Hoc Procedures. As noted above, although it is clear that the Arbitration Panels have no rulemaking authority, section 251.42 authorizes them to waive or suspend the rules of subpart E for purposes of a particular proceeding. This carries on a practice formerly used by the Tribunal, and allows the Panels flexibility in addressing the specific conditions and circumstances of each proceeding; if the Panels were not allowed this flexibility, the resulting procedural rigidity could produce injustices. In cases where subpart E is silent as to the correct procedure to be observed, the Panel may follow its own procedures, as long as they are consistent with the Administrative Procedure Act. However, as with suspension or waiver, the ad hoc procedures adopted by that Panel apply only to that particular proceeding and that particular Panel.

Institution of Proceedings. As was the case with the former Tribunal, proceedings before a Panel begin with the filing of the written direct case. Section 251.43 specifies that the written direct case must include all testimony and exhibits, complete with proper referencing. Each party submitting a written direct case must specify its requested royalty rate or percentage of the royalty pool, whichever is applicable. No evidence may be submitted in the direct written case without a sponsoring witness or official notice, unless good cause is shown. Section 251.43 also gives Copyright Arbitration Royalty Panels discretion in setting the time for the filing of written rebuttal cases after the conclusion of the hearing.

Filing and Service of Written Cases and Pleadings. Section 251.44 governs the filing and service of written cases and pleadings. The division of authority, together with the possible differences in the location of the Copyright Office and the places where the CARPs hold their hearings, require special filing and service requirements. The former Tribunal could maintain all records and evidence at one location, but this is not possible under the new system. Section 251.44(a), therefore, requires that an original and three copies of all filings made to a Panel be submitted in such manner as the Panel shall direct. As was discussed above in connection with the official mailing address, location of arbitration proceedings is likely to change, and the circumstances surrounding mail delivery and receipt could be uncertain. Section 251.44(a) allows the Panels flexibility to deal with this problem by allowing them to establish the means of delivery, whether it be by direct hand delivery, delivery to a specified address, or establishment of a temporary post office box. The parties submitting filings, however, are still required to deliver one copy of their pleading or filing to the Copyright Office at its official address. In the case of large or bulky filings, a Panel may reduce the number of copies it requires, but a complete copy must nonetheless be submitted to the Copyright Office.

Section 251.44(b) prescribes the requirements with respect to all filings with the Librarian of Congress—that is motions and pleadings filed with the Librarian in accordance with these proposed rules both before and after the CARP proceedings. Under the proposed rule, each party must file an original and five copies with the Copyright Office. Section 251.44 also maintains the English-language translation, affidavit, subscription and verification, and service requirements of the former Tribunal.

Precontroversy Discovery. Section 251.45 significantly expands the scope of permitted discovery in arbitration proceedings. In his statement accompanying H.R. 2840. Representative William Hughes, Chairman of the House Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, commented favorably on the use of precontroversy discovery and exchange of information. *See* 139 Cong. Rec. H10973 (daily ed. Nov. 22, 1993) ("In order to reduce the amount of actual litigation time, and thereby reduce expenses, I encourage the Librarian to promulgate regulations permitting exchange of information before the tolling of the 180-day decision period, and, to the extent

[4] The Copyright Office is proposing to repeal subpart D, as it appeared in the former Tribunal's rules, and replace it with rules governing standards of conduct for arbitrators. Former subpart D contained Equal Employment Opportunity provisions for the Tribunal, which are no longer relevant for CARPs since they are without authority to hire personnel or maintain a staff.

practicable, generally to permit precontroversy discovery."). Section 251.45 is proposed to explore the efficacy of Chairman Hughes' recommendation. We particularly seek comments on the scope of such precontroversy discovery: whether it should include interrogatories of witnesses as well as production of supporting documents, and whether it would advance Chairman Hughes' goal of reducing costs by being able to stipulate facts and remove issues, or whether the additional procedures might add costs to the proceeding.

In the case of royalty distribution proceedings, the proposed rule directs the Librarian to designate a period for precontroversy discovery and exchange of documents. This period is to start after the filing of claims and to end at the declaration of a controversy, and is the same time period referred to by section 251.4(b) for the filing of objections to arbitrators. In the case of rate adjustment proceedings, the period for precontroversy discovery and exchange of documents corresponds with the 90-day consideration period for all rate adjustment petitions and proceedings specified by § 251.63.

All parties to a proceeding may voluntarily exchange documents during this time, or may make discovery requests. Failure to respond to requests, and any other discovery controversies or issues, will be resolved by the Librarian. All other objections to royalty claims or petitions, or motions for procedural or evidentiary rulings, shall also be submitted to the Librarian for decision during the same time period. All parties to the proceeding will be given 14 days in which to respond to a motion or objection, regardless of whether or not this 14-day period goes beyond the time periods specified in subsection (a). The Librarian, after consultation with the Register, shall rule on all motions or objections timely submitted, and will not declare a controversy and initiate arbitration proceedings until all rulings have been made. See 17 U.S.C. 801(c).

Discovery and Motions during Proceedings. Section 251.45(c) prescribes a similar procedure for exchanging documents and motions and objections filed with a Panel once a proceeding beings. The Panel must designate a period for discovery with respect to both the written direct and rebuttal cases. No time limits are set on the length of the discovery periods—although, given the Panel's 180-day existence, the deadline will necessarily be short.

After the filing of written cases, either direct or rebuttal, any party may file objections. If an objection is apparent on the face of the written case, it must be raised or may thereafter be considered waived. Section 251.45(d) allows each party whose claim, petition, written case or direct evidence is the subject of an objection, either before the Librarian or a Copyright Arbitration Royalty Panel, to amend its filing to respond to the objection. The Librarian or the Panel may also request that such amended filing be made where necessary. All parties will be given a reasonable period of time to conduct discovery on the amended filing.

Conduct of Hearings. Sections 251.46 through 251.48 are adopted nearly intact from the former Tribunal's rules. Section 251.46 describes the role of the arbitrators and the chairperson during the course of a hearing. Section 251.47 describes the course of proceedings once a hearing has begun, and section 251.48 prescribes the rules of evidence. Only conforming changes have been made to these sections.

Transcript and Record. Section 251.49 governs transcription of the hearings and creation of the record. The Librarian shall, from time to time, designate an official reporter to transcribe the hearings of any arbitration proceedings taking place during that time. Since arbitration proceedings are likely to take place in different locations, the location of the transcript will not always be at a fixed site. Therefore, the chairperson is directed to specify the location of the transcript for public inspection. It is anticipated that the location will usually correspond to that of the hearing, although this may not always be the case. Once the arbitration proceeding is concluded, the transcript, along with the full written record, will be delivered to the Librarian and may be viewed at the Copyright Office.

Rulings and Orders. Section 251.50 gives CARPs the authority to issue rules and orders necessary to the resolution of the proceedings. Once again, the absence of the Panels' authority to issue rulemakings amending, superseding, or supplementing the rules and regulations of this Subchapter is underscored.

Closing Hearings; Submission of Findings and Conclusions; Report. Section 251.51, with respect to closing the hearing, and section 251.52, on submission of proposed findings and conclusions, are adopted intact from the former Tribunal's rules, with conforming amendments.

Section 251.53 essentially codifies the provisions of 17 U.S.C. 802(e) governing the report of Copyright Arbitration Royalty Panels to the Librarian of Congress. The determination of a Panel is to be certified and signed by all the arbitrators, and any written dissent is to be certified and signed by the dissenting arbitrator. Panels must distribute copies of their determination to all participating parties.

Assessment of Costs of Panels. Section 251.54 governs the assessment of costs by Copyright Arbitration Royalty Panels.[5] It implements new section 802(c) of the Copyright Act which states:

> In ratemaking proceedings, the parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the Arbitration Panels shall direct. In distribution proceedings, the parties shall bear the cost in direct proportion to their share of the distribution.

After the conclusion of an arbitration proceeding, the Panel will assess its costs in accordance with the above-described proportions. The chairperson will deliver a statement to each participating party listing the Panel's total costs, the party's individual share, and the amount due to each arbitrator from that party. Payment is to be made to each arbitrator, as provided in the statement, and must be made either by money order, check, or bank draft. Failure to submit timely payment will subject the party to the provisions of the Debt Collection Act of 1982.

Post-Panel Motions; Order of the Librarian; Effective Date; Appeals. After the arbitration process has concluded and the Panel has delivered its report, the Reform Act requires that the Librarian of Congress review the sufficiency of the Panel's determination within 60 days of receipt of the report. Section 251.55 grants the parties to the proceeding 14 days in which to file petitions with the Librarian requesting that the determination be modified or set aside, and an additional 14 days to reply to such petitions. The petitioner must clearly state its reasons for the modification or reversal, and include applicable portions of its proposed findings of fact and conclusions of law. After the four-week period has run, the Librarian will proceed to a decision on the Panel's report. Section 251.56 essentially codifies the review process described in 17 U.S.C. 802(f), with the Librarian publishing the order of his/her decision in the Federal Register and delivering it to all the parties to the proceeding. The order is to be effective 30 days after its publication in the Federal Register, unless an appeal is taken (§ 251.57). The appeals process described in § 251.58 comes directly from 17 U.S.C. 802(g).

[5] Assessment of costs by the Library and the Copyright Office are addressed in §§ 251.65 and 251.74.

6. Subpart F—Rate Adjustment Proceedings

The basic procedural mechanics of an arbitration proceeding are described in Subpart E, but the different nature of rate adjustment proceedings in comparison with that of distribution proceedings calls for additional separate requirements. Subpart F contains those requirements for rate adjustment proceedings.

Scope of Subpart F. Section 251.60 describes the scope of Subpart F, emphasizing that it applies only to rate adjustment proceedings and that it augments the rules of Subpart E. In circumstances where one or more provisions of Subpart E and F are inconsistent, section 251.60 makes clear that Subpart F is controlling.

Commencement of Proceedings; Content of Petitions. Section 251.61 describes the commencement of adjustment proceedings for the applicable compulsory licenses. Adjustment is either automatic, as in the case of non-commercial broadcasting, or by petition, as in the cases of cable, phonorecords, jukeboxes, and audio home recording devices and media. The section implements the changes made by the Reform Act with respect to the dates when proceedings begin or when petitions may be filed. Thus, cable rate adjustment petitions may be filed in 1995 and every 5 years thereafter; those for phonorecords in 1997 and every 10 years thereafter; those for jukeboxes within one year of termination or expiration of a negotiated license; and those for audio home recording devices and media from October 29, 1997 to October 28, 1998 and not more than once a year thereafter. In the case of noncommercial educational broadcasting, the Librarian will publish notice of initiation of arbitration proceedings on June 30, 1997, and every 5 years thereafter. Section 251.62 adopts the former Tribunal's rules governing the content of a petition.

Period for Consideration. Section 251.63 is an important provision. Although it adopts the 90-day "cooling off" period used by the Tribunal to facilitate settlements after the filing of a petition, or prior to a non-commercial educational broadcasting rate adjustment, the 90-day period is significant for other purposes. This same 90-day period is used to conduct precontroversy discovery and exchange of documents (§ 251.45), and to file objections to names on the arbitrator list (§ 251.4). The Librarian will designate the 90-day period for consideration by publishing notice in the **Federal Register**, including the effective beginning and ending dates of that period.

Disposition of Petition; Initiation of Proceeding. After the expiration of the 90-day period, and after the Librarian has resolved all motions submitted during that period, section 251.64 prescribes that the Librarian will determine the sufficiency of the rate adjustment petition. If the petition is sufficient, the Librarian will publish in the **Federal Register** a declaration of a controversy and, at the same time, a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be done for noncommercial educational broadcasting in accordance with 17 U.S.C. 118(b) and (c). The declaration and notice of initiation will commence the 180-day period for proceedings described in 17 U.S.C. 802.

Deduction of Costs. The final section of Subpart F, § 251.65, implements section 802(h)(1) of the Copyright Act which allows the Copyright Office and the Library to assess their reasonable costs for the rate adjustment proceeding directly to the participating parties. These costs include any administrative services provided under U.S.C. 801(d).

7. Subpart G—Royalty Fee Distribution Proceedings

Subpart G is like Subpart F in that it prescribes additional procedural requirements inherent in certain royalty distribution proceedings. There are three compulsory licenses that require royalty-fee distributions: cable, satellite and digital audio. Section 251.70 states that the provisions of Subpart G apply to these licenses, and underscores that, in the case of inconsistencies, Subpart G takes precedence over Subpart E.

Commencement of Proceedings; Determination of Controversy. Section 251.71 describes the commencement of distribution proceedings by prescribing the time period for the filing of royalty claims.[6] In the case of cable, claims must be filed during the month of July; for satellite during July; and for digital audio during January and February. Under section 251.72, after the filing of claims as prescribed by 17 U.S.C. §§ 111(d)(4)(B) (cable). 119(b)(4)(B) (satellite carrier), and 1007(b) (digital audio), the Librarian must determine whether a controversy exists. The Librarian may issue requests for information or conduct hearings to assist in determining the existence of a controversy, with notice of the proceedings to be published in the **Federal Register**.

Declaration of Controversy; Initiation of Proceeding. Once the Librarian has determined that controversy exists, he/she shall publish in the Federal Register a declaration of controversy along with a notice of initiation of arbitration. The notice is to include a description of the nature, structure and schedule of the proceeding.

Deduction of Costs. Section § 251.74 is the royalty-distribution counterpart of § 251.65; it allows the Library and the Copyright Office to deduct their reasonable costs incurred as a result of a distribution proceeding. These expenses include administrative services provided under 17 U.S.C. 801(d).

B. Part 252—Filing of Claims to Cable Royalty Fees

Part 252 prescribes the filing requirements for claims to cable royalties. The Part significantly revises the former Tribunal's rules governing the filing of cable claims by implementing a procedural system similar to that adopted by the Tribunal for the filing of digital audio claims. See 58 FR 53822 (1993). Section 252.1 defines the scope of Part 252.

Time of Filing. Section 252.2 specifies the time of filing for cable claims. Claims for cable royalties from the preceding calendar year must be filed during the month of July, and no distribution will be made to any party failing to make a timely filing. Cable claims may be filed jointly or singly as the submitting parties choose.

Content of Claims. Section 252.3 describes the required content of a claim, and is more detailed than the former Tribunal's requirements. The Copyright Office is not yet prepared to issue claimant forms, and each claimant must therefore take care to insure that information meeting all the requirements of section 252.3 is contained in each claim. Each claim must state the full legal name of the claimant, and its address, telephone number and facsimile number, if any. The claimant must also identify at least one of its copyrighted works that was subject to a secondary transmission by a cable system in the previous calendar year, thereby establishing a basis for a claim to royalties. If the claim is a joint claim, there must be a concise statement of the authorization for filing the joint claim. For this purpose, performing rights societies will not be required to obtain separate authorizations from their individual members beyond their standard agreements.

[6] The procedures for filing claims are described in Parts 252, 256, and 258.

All claims must be signed by the claimant or a duly authorized representative, and the Copyright Office must be notified of name and/or address changes within 30 days of the change. Failure to notify the Office in a timely fashion is grounds for dismissal of the claim. If a party submitting an individual claim wishes to change it to a joint claim, the Office must be notified within 14 days of the agreement to submit a joint claim. All joint claimants must make available to the Copyright Office and, if applicable, to a Copyright Arbitration Royalty Panel—a list of all individual claimants covered by the joint claim.

Compliance With Statutory Dates. Section 252.4 underscores the importance of complying with the July filing period. A claim is considered timely filed if it is received by the Copyright Office during normal business hours in July, or is properly addressed to the Copyright Office with correct postage and bears a July U.S. postmark. Claims dated only with a business meter and not received in July are untimely. Absolutely no claim will be accepted if it is filed by facsimile transmission.

Proof of Fixation. Finally, section 252.5 clarifies that the Copyright Office will not require claimants to file copies of their works. In the event that the issue of fixation arises, the CARP conducting the proceeding will resolve the controversy on the basis of affidavits and other appropriate documentary evidence. No affidavits need be submitted, however, unless requested by the Panel.

C. Parts 253–256

Parts 253 through 256 adopt, with only minor technical changes, the provisions of the former Tribunal's regulations for use of copyrighted works by noncommercial educational broadcasters, adjustment of royalty rates for phonorecord players (jukeboxes), adjustment of royalty rates for making and distributing phonorecords, and adjustment of royalty rates for the cable compulsory license. These actions contain current royalty rates, as adopted by the Tribunal, and will be amended by the Copyright Office in the future as new rates are set by a Copyright Arbitration Royalty Panel or the Librarian of Congress, as the case may be.

In adopting Parts 253–256, several regulations of the former Tribunal are being repealed. Former Part 303, entitled "Access to Phonorecord Players (Jukeboxes)" is repealed, as is former Part 305, "Claims to Phonorecord Player (Jukebox) Royalty Fees." The need for these parts was eliminated by the Reform Act's repeal of the section 116 jukebox compulsory license and replacement with section 116A governing negotiated licenses. The need for former Tribunal Part 306, however, was not eliminated since it contains royalty rates applicable to periods dating back to January 1, 1982. These rates must be preserved, even though the compulsory license has now been eliminated for future years, in the event that parties making use of copyrighted works during the periods covered by the license may now, or in the future, make initial or supplementary payments. Part 254 therefore adopts Part 306 of the former Tribunal's rules, with only one minor technical change.

D. Part 257—Filing of Claims to Satellite Carrier Royalty Fees

Part 257 implements exactly the same requirements for 17 U.S.C. 119 satellite carrier royalty claims that Part 252 adopts for cable claims. Like those for cable, claims in these cases must be filed during the month of July, and may be filed singly or jointly. Section 257.6 makes it clear that, although cable and satellite have the same filing period, separate claims must be filed by a party seeking both cable and satellite royalty fees for the same calendar year. Any single claim which attempts to file for both royalty funds will be dismissed.

E. Parts 258–259

Parts 258 and 259 govern the adjustment of royalty fees for the satellite carrier compulsory license and the filing of digital audio claims, respectively. These two parts adopt Parts 310 and 311 of the former Tribunal's rules with only minor technical changes.

List of Subjects

37 CFR Parts 251 and 301

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Parts 252 and 302

Cable television, Claims, Copyright.

37 CFR Parts 253 and 304

Copyright, Music, Radio, Rates, Television.

37 CFR Parts 254 and 306

Copyright, Jukeboxes, Rates.

37 CFR Parts 255 and 307

Copyright, Music, Recordings.

37 CFR Parts 256 and 308

Cable television, Rates.

37 CFR Parts 257 and 309

Cable television, Claims.

37 CFR Parts 258 and 310

Copyright, Satellite.

37 CFR Parts 259 and 311

Claims, Copyright, Digital audio recording devices and media.

37 CFR Parts 303

Copyright, Jukeboxes.

37 CFR Parts 305

Claims, Jukeboxes.

Proposed Rules

For the reasons set out in the preamble, 37 CFR Chapters II and III are proposed to be amended under authority of 17 U.S.C. 802(d) as follows:

1. Part 301 of Chapter III is removed.

1a. New Subchapter A—Copyright Office Rules and Procedures—is added to chapter II consisting of Parts 201–211.

1b. New Subchapter B—Copyright Arbitration Royalty Panel Rules and Procedures—is added to chapter II consisting of Parts 251–259.

2. A new part 251 is added to subchapter B of Chapter II to read as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

Subpart A—Organization

Sec.

251.1 Official Address.
251.2 Purpose of Copyright Arbitration Royalty Panels.
251.3 Arbitrator lists.
251.4 Arbitrator lists: Objections.
251.5 Qualifications of the arbitrators.
251.6 Composition and selection of Copyright Arbitration Royalty Panels.
251.7 Actions of Copyright Arbitration Royalty Panels.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

251.11 Open meetings.
251.12 Conduct of open meetings.
251.13 Closed meetings.
251.14 Procedure for closed meetings.
251.15 Transcripts of closed meetings.
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Subpart C—Public Access to and Inspection of Records

251.21 Public records.
251.22 Public access.
251.23 FOIA and Privacy Act [Reserved].

Subpart D—Standards of Conduct [Reserved]

Subpart E—Procedures of Copyright Arbitration Royalty Panels

251.40 Scope.
251.41 Formal hearings.
251.42. Suspension or waiver of rules.
251.43 Written cases.

251.44 Filing and service of written cases and pleadings.
251.45 Discovery and prehearing motions.
251.46 Conduct of hearings: Role for arbitrators.
251.47 Conduct of hearings: Witnesses and counsel.
251.48 Rules of evidence.
251.49 Transcript and record.
251.50 Rulings and orders.
251.51 Closing the hearing.
251.52 Proposed findings and conclusions.
251.53 Report to the Librarian of Congress.
251.54 Assessment of costs of Arbitration Panels.
251.55 Post-Panel motions.
251.56 Order of the Librarian of Congress.
251.57 Effective date of order.
251.58 Judicial review.

Subpart F—Rate Adjustment Proceedings

251.60 Scope.
251.61 Commencement of adjustment proceedings.
251.62 Content of petition.
251.63 Period for consideration.
251.64 Disposition of petition: Initiation of arbitration proceeding.
251.65 Deduction of costs of rate adjustment proceedings.

Subpart G—Royalty Fee Distribution Proceedings

251.70 Scope.
251.71 Commencement of proceedings.
251.72 Determination of controversy.
251.73 Declaration of controversy: Initiation of arbitration proceeding.
251.74 Deduction of costs of distribution proceedings.

Authority: 17 U.S.C. 801–803.

Subpart A—Organization

§ 251.1 Official address.

Copyright Office, Copyright Arbitration Royalty Panels, Library of Congress, Washington, DC 20557–6400, (202) 707–8150

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning copyright royalty rates for the cable compulsory license, 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for the making and distributing of phonorecords, 17 U.S.C. 115.

(c) To make determinations concerning copyright royalty rates for coinoperated phonorecord players (jukeboxes) whenever a negotiated license authorized by 17 U.S.C. 116 expires or is terminated and is not replaced by another such license agreement.

(d) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations of certain copyrighted works, 17 U.S.C. 118.

(e) To distribute cable television, satellite carrier and digital audio recording devices and media royalty fees under 17 U.S.C. 111, 119, and chapter 10, respectively, deposited with the Register of Copyrights.

§ 251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit, before March 1, 1994 and before January 1 of each year thereafter, a list of its members qualified to serve as arbitrators on a Copyright Arbitration Royalty Panel. Such list shall contain the following for each member:

(1) The full name, address and telephone number of the member.

(2) The current position and name of the member's employer, if any, along with a brief summary of the member's employment history.

(3) A brief description of the educational background of the member, including teaching positions and membership in professional associations, if any.

(4) A description of the facts and information which qualify the member to serve as an arbitrator under § 251.4.

(5) Any other information which the professional arbitration association or organization may consider relevant.

(b) After March 1, 1994, and after January 1 of each year thereafter, the Librarian of Congress shall publish in the **Federal Register** a list of all the members of professional arbitration associations and organizations submitted to the Librarian who satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as an arbitrator to a Copyright Arbitration Royalty Panel during that calendar year.

§ 251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to the proceeding may, during the 90-day period specified in § 251.63, file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person found to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the time specified in § 251.45(a), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person found to be objectionable.

§ 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a copyright arbitration panel, a person must, at a minimum, have the following qualifications:

(a) Membership in a bar association of any state, territory, trust territory or possession of the United States.

(b) Ten or more years of legal practice.

(c) Experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes.

§ 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within 10 days after publication of a notice in the **Federal Register** initiating arbitration proceedings under this subchapter, the Librarian of Congress shall, upon recommendation of the Register of Copyrights, select 2 arbitrators from lists provided by professional arbitration associations.

(b) The 2 arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same lists. The third arbitrator shall serve as the chairperson of the Panel during the course of the proceedings.

(c) If the 2 arbitrators fail to agree upon the selection of the third, the Librarian shall promptly select the third arbitrator from the same lists.

(d) The third arbitrator so chosen shall serve as the chairperson of the Panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the Panel.

(e) If for any reason one or more of the arbitrators selected by the Librarian is unable to serve during the course of the proceedings, the Librarian shall promptly appoint a replacement: Provided, that once hearings have commenced, no such appointment shall be made and the remaining arbitrators shall constitute a quorum necessary to the determination of the proceeding.

§ 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the **Federal Register** according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement or supersede any of the rules and regulations of this

subchapter, or seek to have any such action published in the Federal Register.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§ 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in § 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the Federal Register at least 7 calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings are to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding. In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than 7 days, that decision must be made by a recorded vote of the Panel and included in the announcement.

§ 251.12 Conduct of open meetings.

(a) Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to insure both the public's right to observe and the ability of the Panel to conduct its business properly. The chairperson will take whatever measures necessary to achieve that purpose.

(b) The right of the public to be present does not include the right to participate or make comments.

(c) Reasonable access for news media will be provided at all public sessions, as long as it does not interfere with the comfort or efficiency of the arbitrators or witnesses. Cameras will be admitted only on the authorization of the chairperson, and no witness may be photographed or have his or her testimony recorded for broadcast if he or she objects.

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the Panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the Panel determines that it is in the best interest of the proceeding to deliberate on such motion or objection in closed session.

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the Panel may vote to keep the discussions closed for 30 days, starting from the first meetings. If the panel feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under § 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of the Panel.

(c) Following such a vote, the following information shall be published in the Federal Register as soon as possible:

(1) The vote of each arbitrator; and

(2) The appropriate exemption under § 251.13; and

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of § 251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least 2 years, or for at least 1 year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under § 251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the Panel and, if at that time he or she determines that they should be disclosed, he or she will resubmit the question to the Panel to gain authorization for their disclosure.

§ 251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned "Request to Open" or "Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the Panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the Panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Subpart C—Public Access to and Inspection of Records

§ 251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the **Federal Register** in accordance with § 251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for inspection and copying at the address provided in § 251.1 with the exception of:

(1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, Copyright Office or Library of Congress;

(4) Personnel, medical or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a Panel concerning the drafting of decisions, opinions, reports, and findings on any Panel matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators or findings on any matter or proceeding conducted under 17 U.S.C. chapter 8;

(7) Offers of settlement which have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as "exempted" if a CARP or the Librarian of Congress finds compelling reasons for such action to exist.

§ 251.22 Public access.

(a) *Location of Records.* All records relating to rate adjustment and distribution proceedings under this subchapter which are:

(1) Required to be filed with the Copyright Office; or

(2) Submitted to or produced by the Copyright Office or Library of Congress under 17 U.S.C. 801 and 802, or

(3) Submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding shall be maintained at the Copyright Office. In the case of records submitted to or produced by a CARP which is currently conducting a proceeding, such records shall be maintained by the chairperson of that Panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the Panel for access and copying by the person making the request.

(c) *Fees.* Fees for photocopies of CARP or Copyright Office records are $0.40 per page, and fees for searching for records, certification of documents, and other costs incurred are as provided in 17 U.S.C. 705, 708.

§ 251.23 FOIA and Privacy Act [Reserved]

Subpart D—Standards of Conduct [Reserved]

Subpart E—Procedures of Copyright Arbitration Royalty Panels

§ 251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels for the adjustment of royalty rates and distribution of royalty fees convened under 17 U.S.C. 803. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

§ 251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of § 251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the time periods provided in § 251.45(a) and § 251.63, any party to the proceeding may petition the Librarian of Congress to have the determination of the controversy rendered strictly on the submission of written pleadings. Replies to such petitions may be filed within 14 days. The Librarian, upon recommendation of the Register of Copyright, shall rule on the petition prior to the declaration of a controversy and initiation of a proceeding.

§ 251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other Panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the Panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

§ 251.43 Written cases.

(a) The proceedings of a Copyright Arbitration Royalty Panel for rate adjustment, royalty fee distribution, or arbitration conducted under 17 U.S.C. 1010 shall begin with the filing of written direct cases of the parties who have filed a notice of intent to participate in the hearing.

(b) The written direct case shall include all testimony, including each

witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each part must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the Panel has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

§ 251.44 Filing and service of written cases and pleadings.

(a) *Copies filed with a Copyright Arbitration Royalty Panel.* In all filings with a Copyright Arbitration Royalty Panel, the submitting party shall deliver, in such a fashion as the Panel shall direct, an original and three copies to the Panel. The submitting party shall also deliver one copy to the Copyright Office at the address listed in § 251.1. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, a CARP may reduce the number of copies required by the Panel, but a complete copy must still be submitted to the Copyright Office. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) *Copies filed with the Librarian of Congress.* In all pleadings filed with the Librarian of Congress, the submitting party shall deliver an original and five copies to the Copyright Office. In no case shall a party tender any pleading by facsimile transmission.

(c) *English language translations.* In all filings with a CARP or the Librarian of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that he or she has read the document, that to the best of his or her knowledge and belief there is good ground to support it, and that it has been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) *Service.* In all filings with a CARP or the Librarian of Congress, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the Panel or the Copyright Office. If a party files a pleading that requests or would require action by the Panel or the Librarian within 10 or fewer days after the filing, it must serve the pleading upon all other counsel or parties by means no slower than overnight express mail on the same day the pleading is filed.

§ 251.45 Discovery and prehearing motions.

(a) *Precontroversy exchange of documents and discovery.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims and before publication of the notice initiating an arbitration proceeding under 17 U.S.C. 803, designate a period for precontroversy exchange and discovery of nonprivileged underlying documents related to the proceeding. In the case of rate adjustment proceedings, the period for precontroversy exchange and discovery of documents shall correspond with the 90-day period specified in § 251.63.

(b) *Precontroversy motions and objections.* During the time periods specified in § 251.45(a), as appropriate, any party to the proceeding may file with the Librarian of Congress motions regarding precontroversy exchange of documents or discovery, objections to any party's royalty claim or petition, or motions for procedural or evidentiary rulings, on any proper ground. Any party to the proceeding wishing to file a response to such motion or objection may do so within 14 days. The Librarian, upon recommendation of the Register of Copyrights, shall rule on the motion or objection prior to the declaration of a controversy and initiation of an arbitration proceeding.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of the written direct and rebuttal cases in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of the written cases, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a Panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

§ 251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses:

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the Panel's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a Panel, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

§ 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the Panel expands the witness' testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the hearing without leave from the Panel. See § 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the Panel sustains an objection; no separate motion will be required.

(h) If the Panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The Panel shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The Panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the Panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the Panel and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the Panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness' direct testimony. However, upon leave from the Panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the Panel's view, the cross-examined witness is the proper sponsoring witness.

(l) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of their parties within the group.

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the Panel desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be

produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies, if requested, which employ alternative models and variables.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data itself.

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress from time to time. Anyone wishing to inspect the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing. Anyone wishing a copy of the transcript must purchase it from the official reporter.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, That no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

§ 251.51 Closing the hearing.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the Panel may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume, except upon 10 days' notice to all parties.

§ 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues specifically affecting that person.

§ 251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law specified in § 251.52, and not later than 180 days from publication in the **Federal Register** of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.

(b) The determination of the Panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinions shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the Panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

§ 251.54 Assessment of costs of Arbitration Panels.

(a) After the conclusion of the proceeding and the delivery of the report of the determination of the Copyright Arbitration Royalty Panel, the

Panel may assess its costs to the participants to the proceeding.

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

(2) In the case of a royalty distribution proceeding, the parties to the proceeding shall bear the cost of the proceeding in direct proportion to their share of the distribution.

(b) The chairperson of the Panel shall cause to be delivered to each participating party a statement of the total costs of the proceeding, the party's share of the total cost, and the amount owed by the party to each arbitrator.

(c) All parties to a proceeding shall have 30 days from receipt of the statement of costs and bill for payment in which to tender payment to the arbitrators. Payment should be in the form of a money order, check, or bank draft. Failure to submit timely payment may submit the nonpaying party to the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies.

§ 251.55 Post-Panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the Panel's report of its determination. Such petition shall state the reasons for modification or reversal of the Panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

§ 251.56 Order of the Librarian of Congress.

(a) After the filing of post-Panel motions, see § 251.55, but within 60 days from receipt of the report of the determination of a Panel, the Librarian of Congress shall issue an order accepting the Panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the Panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the order shall set forth the reasons for not accepting the Panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The librarian shall also publish the order, and the determination of the Panel, in the **Federal Register**.

§ 251.57 Effective date of order.

An order of determination issued by the Librarian under § 251.56 shall become effective 30 days following its publication in the **Federal Register**, unless an appeal has been filed pursuant to § 251.58 and notice of the appeal has been served on all parties to the proceeding.

§ 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under § 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the **Federal Register**.

(b) If no appeal is brought within the 30 day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees specified by those sections.

Subpart F—Rate Adjustment Proceedings

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable television (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), noncommercial educational broadcasting (17 U.S.C. 118), and audio home recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable television, phonorecords, coin-operated phonorecord players (jukeboxes) and audio home recording devices and media, rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable Television: During 1995, and each subsequent fifth calendar year.

(2) Phonorecords: During 1997 and each subsequent 10th calendar year.

(3) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(4) Audio home recording devices and media: From October 29, 1997 to October 28, 1998, and not more than once each year thereafter.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2) (B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the **Federal Register** on June 30, 1997, and at 5 year intervals thereafter.

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable television, phonorecords, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

§ 251.63 Period for consideration.

To allow time for parties to settle their differences regarding rate adjustments, the Librarian of Congress shall, after the filing of a petition, or prior to a rate adjustment made under 17 U.S.C. 118(b), designate a 90-day period for consideration. The Librarian shall cause notice of the consideration period to be published in the **Federal Register**, and

such notice shall include the effective dates of that period.

§ 251.64 Disposition of petition: Initiation of arbitration proceeding.

At the end of the 90-day period, and after the Librarian has resolved all motions filed during that period under § 251.45(b), the Librarian shall determine the sufficiency of the petition including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is sufficient, he/she shall cause to be published in the **Federal Register** a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting in accordance with 17 U.S.C. 118 (b) and (c). Such notice shall, to the extent feasible, describe the nature, general structure, and schedule of the proceeding.

§ 251.65 Deduction of costs of rate adjustment proceedings.

In accordance with 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

Subpart G—Royalty Fee Distribution Proceedings

§ 251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable television (17 U.S.C. 111), satellite carrier (17 U.S.C. 119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.71 Commencement of proceedings.

(a) *Cable television.* In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers.* In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

§ 251.72 Determination of controversy.

(a) *Cable television.* After the first day of August each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of cable television compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

(b) *Satellite carriers.* After the first day of August of each year, the Librarian shall determine whether a controversy exists among the claimants of the satellite carrier compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

(c) *Digital audio recording devices and media.* Within 30 days after the last day of February each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. 1006(b) (1) and (2). In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

§ 251.73 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable television, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

§ 251.74 Deduction of costs of distribution proceedings.

Pursuant to 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may, before any distributions of cable television royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceedings.

3. Part 302 of chapter III is removed.

3a. A new part 252 is added to subchapter B of chapter II to read as follows:

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.

252.1 Scope.
252.2 Time of filing.
252.3 Content of claims.
252.4 Compliance with statutory dates.
252.5 Proof of fixation of works.

Authority: 17 U.S.C. 111(d)(4), 801, 803.

§ 252.1 Scope.

This part prescribes procedures under 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

§ 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 252.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to cable compulsory license

royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements.

(4) A general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a cable system establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change within 30 days of the change, or the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, a claimant chooses to negotiate a joint claim, either the particular joint claimant or the individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

(e) All claimants filing a joint claim shall make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim.

§ 252.4 Compliance with statutory dates.

Claims filed with the Copyright Office shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(b) They are properly addressed to the Copyright Office, see § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark. Claims dated only with a business meter that are received after July 31 will not be accepted as having been filed during the month of July. No claim may be filed by facsimile transmission.

§ 252.5 Proof of fixation of works.

In any proceeding for the distribution of cable television royalty fees, the Copyright Office shall not require the filing by claimants of tangible fixations of works in whole or in part. In the event of a controversy concerning the actual fixation of a work in a tangible medium of expression as required by the Copyright Code, the Copyright Arbitration Royalty Panel conducting the distribution proceeding shall resolve such controversy on the basis of affidavits by appropriate operational personnel and other appropriate documentary evidence, and such oral testimony as the Panel may deem necessary. Affidavits submitted by claimants should establish that the work for which the claim is submitted was fixed in its entirety, and should state the nature of the work, the title of the program, the duration of the program, and the date of fixation. No such affidavits need be filed with a Copyright Arbitration Royalty Panel unless requested by that Panel.

4. Part 303—ACCESS TO PHONORECORD PLAYERS (JUKEBOXES) of chapter III is removed.

5. Part 304 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 253.

6. The heading for part 253 is revised to read as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

7. The authority citation to part 253 is revised to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.4 [Amended]

8. Section 253.4 is amended in the introductory text of the section by removing "§§ 304.5 and 304.6" and adding "§§ 253.5 and 253.6".

§ 253.8 [Amended]

9. Section 253.8(e) is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.9 [Amended]

10. Section 253.9 is amended by removing "CRT" and adding "Copyright Office".

§ 253.10 [Amended]

11. Section 253.10 is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.10 [Amended]

11a. Section 253.10(b) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.10 [Amended]

11b. Section 253.10(c) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.12 [Amended]

12. Section 253.12, "Amendment of certain regulations" and 253.13, "Issuance of interpretative regulations" are removed.

PART 305— [REMOVED]

13. Part 305—CLAIMS TO PHONORECORD PLAYER (JUKEBOX) ROYALTY FEES of chapter III is removed.

14. Part 306 is transferred to chapter II, subchapter B and is redesignated as part 254.

15. The heading for part 254 is revised to read as follows:

PART 254—ADJUSTMENT OF ROYALTY RATE FOR COIN OPERATED PHONORECORD PLAYERS

16. The authority citation for part 254 is revised to read as follows:

Authority: 17 U.S.C. 116. 801(b)(1).

§ 254.1 [Amended]

17. Section 254.1 is amended by removing "306" and adding "254" and by removing "and 804(a)".

18. Part 307 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 255.

19. The heading for part 255 is revised to read as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

20. The authority citation for part 255 is revised to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

§ 255.1 [Amended]

21. Section 255.1 is amended by removing "307" and adding "255".

§ 255.2 [Amended]

22. Section 255.2 is amended by removing "§ 307.3" and adding "§ 255.3".

§ 255.3 [Amended]

23. Section 255.3 is amended in paragraph (g)(1) by removing "Copyright Royalty Tribunal" and in paragraphs (g)(1) and (g)(2) by removing "CRT" each place it appears and adding "Librarian of Congress" in each place respectively.

24. Part 308 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 256.

25. The heading for part 256 is revised to read as follows:

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

26. Part 309 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 257.

27. Part 257 is revised to read as follows:

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.
257.1 General.
257.2 Time of filing.
257.3 Content of claims.
257.4 Compliance with statutory dates.
257.5 Proof of fixation of works.
257.6 Separate claims required.

Authority: 17 U.S.C. 119.

§ 257.1 General.

This part prescribes the procedures under 17 U.S.C. 119(b)(4) whereby parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Office.

§ 257.2 Time of filing.

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim with the Copyright Office. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file jointly or as a single claim.

§ 257.3 Content of claims.

(a) Claims filed for satellite carrier compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming compulsory license royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements.

(4) A general statement of the nature of the claimant's copyrighted works and identification of a least one secondary transmission by a satellite carrier establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change within 30 days of the change, or the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, an interested copyright party chooses to negotiate a joint claim, either the particular joint claimants or individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

(e) All claimants filing a joint claim shall make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim.

§ 257.4 Compliance with statutory dates.

Claims filed with the Copyright Office shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(b) They are properly addressed to the Copyright Office, *see* § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark. Claims dated only with a business meter that are received after July 31 will not be accepted as having been filed during the month of July. No claim may be filed by facsimile transmission.

§ 257.5 Proof of fixation of works.

In any proceeding for the distribution of satellite carrier royalty fees, the Copyright Office shall not require the filing by claimants of tangible fixations of works in whole or in part. In the event that a controversy concerning the actual fixation of a work in a tangible medium of expression as required by the Copyright Code, the Copyright Arbitration Royalty Panel conducting the distribution proceeding shall resolve such controversy on the basis of affidavits by appropriate operational personnel and other appropriate documentary evidence, and by such oral testimony as the Panel may deem necessary. Affidavits submitted by claimants should establish that the work for which the claim was submitted was fixed in its entirety, and should state the nature of the work, the title of the program, the duration of the program, and the date of fixation. No such affidavits need be filed with a CARP unless requested by that Panel.

§ 257.6 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Office. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

28. Part 310 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 258.

29. The heading for part 258 is revised to read as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

29a. The authority citation for part 258 continues to read as follows:

Authority: 17 U.S.C. 119(c)(3)(F).

§ 258.1 [Amended]

30. Section 258.1 is amended by removing "310" and adding "258".

§ 258.2 [Amended]

31. Section 258.2 is amended by removing "§ 310(3)(b)" and adding "§ 258(3)(b)".

32. Part 311 of chapter III is transferred to subchapter B of chapter II and is redesignated as Part 259.

33. The heading for part 259 is revised to read as follows:

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

33a. The authority citation for part 259 is revised to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.1 [Amended]

34. Section 259.1 is amended by removing "Copyright Royalty Tribunal" and adding "Copyright Office".

§ 259.2 [Amended]

35. Section 259.2 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

§ 259.3 [Amended]

36. Section 259.3 is amended by removing "Copyright Royalty Tribunal"

each place it appears and adding "Copyright Office".

§ 259.4 [Amended]

37. Section 259.4 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

§ 259.5 [Amended]

38. Section 259.5 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

§ 259.5b [Amended]

39. Section 259.5(b) is amended by removing "1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009" and adding "Copyright Office, *see* § 251.1.".

§ 259.6 [Removed]

40. Section 259.6 is removed.

Dated: January 11, 1994.

Barbara A. Ringer,

Acting Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–1199 Filed 1–14–94; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4827–5]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 16

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") proposes to add new sites to the NPL. This 16th proposed revision to the NPL includes 16 sites in the General Superfund Section and 10 in the Federal Facilities Section. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action does not affect the 1,192 sites currently listed on the NPL (1,069 in the General Superfund Section and 123 in the Federal Facilities Section). However, it does increase the number of proposed sites to 97 (67 in the General Superfund Section and 30 in the Federal Facilities Section). Final and proposed sites now total 1,289.

DATES: Comments must be submitted on or before February 17, 1994, for Raymark Industries, Inc. (Stratford, Connecticut), Lower Ecorse Creek Dump (Wyandotte, Michigan) and Tennessee Products (Chattanooga, Tennessee) since these are sites being proposed based on ATSDR health advisory criteria and present immediate concerns. For the remaining sites in this proposal, comments must be submitted on or before March 21, 1994.

ADDRESSES: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA CERCLA Docket Office; 5201; Waterside Mall; 401 M Street, SW.; Washington, DC 20460; 202/260–3046. For additional Docket addresses and further details on their contents, see Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW Washington, DC 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Proposed Rule
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, 100 stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") and financed by other persons are included in the NCP in 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which is appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants, and contaminants to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP in 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP in 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above

28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA promulgates a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP in 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 14, 1992 (57 FR 47180).

The NPL includes two sections, one of sites being evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining if the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP in 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 56 sites from the General Superfund Section of the NPL, most recently the Suffern Village Well Field, Village of Suffern, New York (58 FR 30989, May 28, 1993), Pesticide Lab, Yakima, Washington (58 FR 46087, September 1, 1993), LaBounty Site, Charles City, Iowa (58 FR 50218, October 6, 1993), Aidex Corporation, Council Bluffs, Iowa (58 FR 54297, October 21, 1993), Hydro-Flex Inc., Topeka, KS (58 FR 59369, November 9, 1993) and Plymouth Harbor/Cannon Engineering Corp., Plymouth, Massachusetts (58 FR 61029, November 19, 1993).

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 55 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 162 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of October 1993, the CCL consists of 217 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of September 30, 1993, EPA had conducted 591 removal actions at NPL sites, and 1,734 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Pursuant to the NCP in 40 CFR 300.425(c), this document proposes to add 26 sites to the NPL. The General Superfund Section includes 1,069 sites, and the Federal Facilities Section includes 123 sites, for a total of 1,192 sites on the NPL. Final and proposed sites now total 1,289. These numbers reflect EPA's decision to voluntarily remove the Hexcel Corporation site, in Livermore, CA, from the NPL.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule, as well as the health advisories issued by ATSDR and documentation supporting the designation as a State top priority, where applicable, are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

Docket Coordinator, Headquarters, USEPA CERCLA Docket Office, 5201 Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260–3046

Ellen Culhane, Region 1, USEPA, Waste Management Records Center, HES–CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729.

Ben Conetta, Region 2, USEPA, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, 212/264–6696

Diane McCreary, Region 3, USEPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107. 215/597–7904

Kathy Piselli, Region 4, USEPA, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–4216

Cathy Freeman, Region 5, USEPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6, USEPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Steven Wyman, Region 7, USEPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241

Greg Oberley, Region 8, USEPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598

Lisa Nelson, Region 9, USEPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347

David Bennett, Region 10, USEPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103.

With the exception of Raymark Industries, Inc. (Stratford, Connecticut), Lower Ecorse Creek Dump (Wyandotte, Michigan), and Tennessee Products (Chanttanooga, Tennessee) which are sites being proposed based on the ATSDR health advisory criteria, and Boomsnub/Airco (Vancouver, Washington) which has been designated as a State top priority, the Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation

Record. Each Regional docket for this rule, except for the three ATSDR health advisory sites and the State top priority mentioned above, contains all of the information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. For the three sites proposed on the basis of health advisory criteria, both the Headquarters and Regional dockets contain the public health advisories issued by ATSDR, and EPA memoranda supporting the findings that in each case the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the site. For the site that has been designated a top priority by the State, both the Headquarters and Regional dockets contain supporting documentation. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). EPA will make final listing decision after considering the relevant comments received during the comment period.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 57 FR 4824 (February 7, 1992)). Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment ("PA"), is a low-cost review of existing information to determine if the site poses a threat to public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA will generally perform a more extensive study called the Site Inspection ("SI"). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites which warrant placement on the NPL and further study. EPA may perform removal actions at any time during the process. To date EPA has completed approximately 35,000 PAs and approximately 17,000 SIs.

The NCP in 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP in 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although the ranking of sites by HRS scores is considered, it does not, by itself, determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(b)(2), 55 FR 8845, March 8, 1990). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant risk or sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It takes into account the amount of hazardous substances, pollutants or contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP in 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge of the geographic extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability or define the geographic extent of a release, a listing need not be amended if further research into the contamination at a site reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

Limitations on Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460 (January 21, 1993), 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "preauthorization," from EPA.

III. Contents of This Proposed Rule

Table 1 identifies the 16 NPL sites in the General Superfund Section and Table 2 identifies the 10 NPL sites in the Federal Facilities Section being proposed in this rule. Both tables follow this preamble. With the exception of Raymark Industries, Inc. (Stratford, Connecticut), Lower Ecorse Creek Dump (Wyandotte, Michigan), and Tennessee Products (Chattanooga, Tennessee) which are sites being proposed based on ATSDR health advisory criteria, and Boomsnub/Airco (Vancouver, Washington) which has been designated as a State top priority, all sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the General Superfund Section of the NPL. Sites in the Federal Facilities Section are also presented by group number based on groups of 50 sites in the General Superfund Section.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. 6901–6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings (56 FR 5598, February 11, 1991).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that non-Federal sites subject to RCRA Subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will

list certain categories of RCRA sites subject to Subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in the past (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add one site to the General Superfund Section of the NPL that may be subject to RCRA Subtitle C corrective action authorities, the Raymark Industries, Inc. site in Stratford, Connecticut, which is being proposed based on ATSDR health advisory criteria. Material has been placed in the public docket establishing that the facility operated as a hazardous waste generator and land disposal facility. Raymark Industries, Inc. is a RCRA Subtitle C regulated facility which has initiated bankruptcy proceedings. Listing of the Raymark Industries, Inc. site on the NPL under these circumstances is consistent with EPA's NPL/RCRA deferral policy.

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

This rule proposes to add ten sites to the Federal Facilities Section of the NPL.

ATSDR Health Advisory Based Proposed Sites

Raymark Industries, Inc. in Stratford, Connecticut, Lower Ecorse Creek Dump in Wyandotte, Michigan, and Tennessee Products in Chattanooga, Tennessee, are being proposed for the NPL on the basis of section 425(c)(3) of the NCP, 40 CFR 300.425(c)(3) (55 FR 8845, March 8, 1990).

Raymark Industries, Inc.

The Raymark Industries, Inc. site includes the Raymark Industries, Inc. facility and other locations where Raymark Industries, Inc. facility waste has come to be located and that EPA determines pose a significant threat to public health. The Raymark Industries, Inc. facility comprises about 500,000 square feet of office, storage and production space on 33.4 acres next to Interstate Route 95. A public recreation park containing a baseball diamond and recreation field is located immediately northwest of the site. The facility began operations at this location in 1919 and primarily manufactured asbestos brake linings and other automotive asbestos products until operations ceased in 1989. The facility operated as a hazardous waste generator and land disposal facility. The hazardous waste produced on-site consisted primarily of lead-asbestos dust, metals and solvents. From 1919 to July 1984, Raymark Industries, Inc. used a system of lagoons to attempt to capture the waste lead and asbestos dust produced by its manufacturing process. Over this 65 year period, these lagoon systems were located throughout the western and central areas of the facility. As the lagoons filled with sludge they were covered with asphalt and often built upon. Dredged materials were also landfilled at other locations, including the adjacent ballfield. Interim actions intended to stabilize waste have been conducted at the Raymark Industries, Inc. facility and the ballfield.

An intensive surficial sampling program of the other locations where waste from Raymark Industries, Inc. is known or suspected to have been received and used as fill was instituted by the Connecticut Department of Environmental Protection and EPA in April 1993. Based upon the analytical results of this activity, which indicated concentrations of lead, asbestos, and polychlorinated biphenyls (PCBs), ATSDR issued a public health advisory on May 26, 1993 for "Raymark Industries/Stratford Asbestos Sites". The advisory recommended dissociation of the public from areas where exposure to Raymark Industries, Inc. waste at levels of health concern can occur. The presence of dioxin in Raymark Industries, Inc. waste has subsequently been confirmed. The advisory was based on the concern that people could be exposed to site-related contaminants through inhalation, direct dermal contact, ingestion of waste present in the soil, and consumption of potentially contaminated area seafood.

The results from samples collected to determine the lateral extent of contamination at known disposal locations has served as the basis for supplemental ATSDR site-specific Health Consultations. ATSDR recommended immediate response actions based upon the finding of imminent health threats. Sampling to determine the vertical extent of contamination at these disposal areas is presently being conducted to expedite complete site characterization. Site characterization and initiation of mitigation actions at known locations and at newly discovered sites are being prioritized for early action.

EPA's assessment is that the site poses a significant threat to human health and anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site. This finding is set out in a memorandum dated November 3, 1993, from Merrill S. Hohman, Region 1 Waste Management Division Director, to Larry Reed, Hazardous Site Evaluation Division Director. This memorandum and the ATSDR advisory are available in the Superfund docket for this proposed rule. Based on this information, and the references in support of proposal, EPA believes that the Raymark Industries, Inc. site is appropriate for the NPL pursuant to 40 CFR 300.425(c)(3).

Lower Ecorse Creek Dump

The Lower Ecorse Creek Dump site is located in Wyandotte, Wayne County, Michigan. The site consists of the residence at 470 North Drive and three neighboring parcels of land. The site occupies a level area with the back of the lots abutting the Ecorse River. During the period between 1945 and 1955, and prior to the house at 470 North Drive being built, the low lying swampy area of the creek was filled with material from local industries. Some of the fill material contained what has been confirmed as ferric ferrocyanide, commonly referred to as "Prussian Blue". The blue soil was also found across the street at 471 North Drive, approximately two feet below the surface and the owner of the residence at 469 North Drive also reported that he found the blue soil in his yard. In addition, there are two vacant lots east of 470 North Drive where Prussian Blue is exposed. Neighborhood children have used portions of these lots as a go-cart track and wearing of the topsoil by the go-carts has exposed the Prussian Blue.

The EPA was contacted by the Wayne County Health Department on October 25, 1989. EPA tasked its Technical Assistance Team (TAT) on October 27, 1989, to conduct a site investigation and sampling. Sampling results were provided to ATSDR for review and assessment. ATSDR's review on November 22, 1989, concluded that "The levels of cyanide found in the soil do present an urgent public health threat. Steps to eliminate any direct contact with the contaminated soil need to be taken immediately."

Following ATSDR's determination that the presence of cyanide-contaminated wastes in an unrestricted residential area presented an immediate and significant public health threat,

EPA's Emergency Response Branch initiated removal activities. On December 4, 1989, work commenced to cover the contaminated areas with six inches of clean topsoil and fill in areas of the driveway and sidewalk which had been previously excavated by the property owner. This action eliminated physical contact with Prussian Blue and related cyanide compounds which had spread throughout the area. The initial action was completed in the summer of 1990 with the establishment of a vegetative cover.

The Final ATSDR Health Advisory which was released on August 13, 1993, recommended the following actions:

(1) Immediately dissociate the affected residents from cyanide contamination, which is at levels of health concern in residential subsurface soils;

(2) Implement permanent measures to remediate the contamination as appropriate; and

(3) Consider including the Lower Ecorse Creek Dump site on the EPA National Priorities List or, using other statutory or regulatory authorities as appropriate, take other steps to characterize the site and take necessary action.

Additional recommendations by ATSDR include conducting a door-to-door well survey and well sampling to determine the extent and level of any groundwater contamination. ATSDR also suggests restricting digging into contaminated subsurface soil to prevent human contact with contaminated soils and released cyanide gas.

EPA's assessment is that the site poses a significant threat to human health and anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site considering the costs and time involved in an extensive groundwater study and potential groundwater remediation. This finding is set out in a memorandum dated August 30, 1993, from William E. Muno, Region 5 Waste Management Division Director, to Larry Reed, Hazardous Site Evaluation Division Director. This memorandum and the ATSDR advisory are available in the Superfund docket for this proposed rule. Based on this information, and the references in support of proposal, EPA believes that the Lower Ecorse Creek Dump site is appropriate for the NPL pursuant to 40 CFR 300.425(c)(3).

Tennessee Products

The Tennessee Products site, is an aggregation of Southern Coke Corporation (Southern Coke), Chattanooga Creek Tar Deposit Site and Hamill Road Dump No. 2. The site is located in a heavily populated, low-income, urban and industrial area in the Chattanooga Creek (the creek) basin in Chattanooga, Hamilton County, Tennessee. The site consists of the former Tennessee Products coke plant and its associated uncontrolled coal-tar dumping grounds in Chattanooga Creek and its floodplain. Uncontrolled dumping of coal-tar wastes has contaminated the facility, groundwater resources underlying the facility, and surface water resources downstream of the facility including wetlands and fisheries.

The former Tennessee Products coke plant (a.k.a. Southern Coke) is located at 4800 Central Avenue, south of Hamill/Hooker Road and approximately one mile west of the creek. The coal-tar wastes are located along an approximate 2.5 mile section of the creek extending from just upstream of Hamill Road bridge to the creek's confluence with Dobbs Branch. The coal-tar deposits are the result of dumping coal-tar wastes directly into the creek and onto the floodplain within the immediate vicinity of the creek channel. The largest coal-tar deposits have been found in the creek bed and along its banks within a 1 mile segment of the creek between Hamill Road and 38th Street. Analyses for polynuclear aromatic hydrocarbons (PAHs) as well as visual inspection of sediment cores confirm that coal-tar has heavily contaminated this segment of the creek plus an additional 1.5 miles of the creek downstream from this segment.

ATSDR issued a Public Health Advisory for the Tennessee Products Site on August 20, 1993, based on the chemical and physical hazard presented by the coal-tar deposits at the site. The Advisory recommends the following actions:

(1) Dissociate residents from the coal-tar deposits;

(2) Continue site characterization to address the potential for migration of contaminants;

(3) Consider the Tennessee Products Site for inclusion on the NPL;

(4) As appropriate, consider other coal-tar contaminated sites along the creek for inclusion on the NPL.

Studies have been conducted on Chattanooga Creek on several occasions by EPA and other agencies since 1973. Several of these studies indicate that coal-tar constituents have contaminated the creek and its sediments. The latest of these studies, conducted in 1992 by EPA, has revealed the extent of the coal-tar dumping along the creek. This new information, in combination with historical file information, supports the aggregation of the above mentioned sites. The aggregation criteria is discussed in a memo to the file, from Loften Carr, Site Assessment Manager, EPA Region 4, dated June 8, 1993, which is included in the nomination package.

Historical sampling and aerial photographic evidence indicate that the tar was dumped into the creek, on the banks and in areas near the creek over several years during the 1940s and 1950s. During World War II, the U.S. Government purchased the Tennessee Products facility and operated it for the war effort. The facility was sold back to the company after the end of the war. Due to increased coke production during the war, a substantial increase in waste generated by Tennessee Products may have strained waste handling procedures practiced by Tennessee Products before 1941. Documentation of the disposal practices of Tennessee Products during this time period is not available; however, Tennessee Products maintained a private sewer line which discharged directly into the creek.

EPA's assessment is that the site poses a significant threat to human health and anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site. This finding is set out in a memorandum dated August 17, 1993, from Joseph R. Franzmathes, Region 4 Waste Management Division Director, to Larry Reed, Hazardous Site Evaluation Division Director. This memorandum and the ATSDR advisory are available in the Superfund docket for this proposed rule. Based on this information, and the references in support of proposal, EPA believes that the Tennessee Products site is appropriate for the NPL pursuant to 40 CFR 300.425(c)(3).

Name Change

EPA is proposing to change the name of the Schofield Barracks site in Oahu, Hawaii, to Schofield Barracks/Wheeler Army Airfield. EPA believes the name change more accurately reflects the site.

IV. Regulatory Impact Analysis

Executive Order 12866

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 12580 (52 FR 2923, January 29, 1987). No changes were made in response to OMB.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a

significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes to revise the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, proposing sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's proposed inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

NATIONAL PRIORITIES LIST—PROPOSED RULE NO. 16—GENERAL SUPERFUND SECTION

[Number of Sites Proposed to General Superfund Section: 16]

State	Site name	City/county	NPL Gr[1]
CA	Frontier Fertilizer	Davis	14
CT	Raymark Industries, Inc	Stratford	NA
FL	Chevron Chemical Co. (Ortho Division)	Orlando	4/5
IA	Mason City Coal Gasification Plant	Mason City	1
KS	Chemical Commodities Inc	Olathe	4/5
LA	Lincoln Creosote	Bossier City	17
MI	Lower Ecorse Creek Dump	Wyandotte	NA
NY	GCL Tie and Treating Inc	Village of Sidney	5
PA	East Tenth Street	Marcus Hook	4
TN	Chemet Co	Moscow	4/5
TN	Tennessee Products	Chattanooga	NA
UT	Kennecott (North Zone)	Magna	2
UT	Kennecott (South Zone)	Copperton	2
UT	Murray Smelter	Murray City	1
VI	Island Chemical Corp./Virgin Islands Chemical Corp	St. Croix	4/5
WA	Boomsnub/Airco	Vancouver	NA

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

NATIONAL PRIORITIES LIST—PROPOSED RULE NO. 16—FEDERAL FACILITIES SECTION

[Number of Sites Proposed to Federal Facilities Section: 10]

State	Site name	City/county	NPL Gr[1]
CA	Laboratory for Energy-Related Health Research/Old Campus Landfill (USDOE)	Davis	4/5
FL	Whiting Field Naval Air Station	Milton	4/5
HI	Naval Computer and Telecommunications Area Master Station Eastern Pacific	Oahu	4/5
MD	Patuxent Naval Air Station	St. Mary's Co	4/5
MI	Wurtsmith Air Force Base	Iosco County	4/5
OH	Air Force Plant 85	Columbus	4/5
OH	Rickenbacker Air National Guard Base	Lockbourne	4/5
PA	Navy Ships Parts Control Center	Mechanicsburg	4/5
VA	Fort Eustis (US Army)	Newport News	4/5
WA	Old Navy Dump/Manchester Laboratory (USEPA/NOAA)	Kitsap County	4/5

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: January 11, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–1146 Filed 1–14–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25 and 160

[CGD 78–174]

RIN 2115–AA29

Hybrid PFD's; Establishment of Approval Requirements

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On August 22, 1985 the Coast Guard published an interim final rule (IFR) in the Federal Register (50 FR 33923) which established structural and performance standards and procedures for approval of hybrid inflatable personal flotation devices (PFD). This IFR allowed the approval of several hybrid PFD's but not enough devices were made and sold to make a significant difference in the number of lives saved by this superior performing and more comfortable PFD. The changes proposed are designed to make hybrid PFD's more affordable and attractive to recreational boaters. The changes include lowering manufacturing costs by reducing the amount of repetitive testing required. Increases in buoyancy are proposed to compensate for removing of the Type V criteria of being "REQUIRED TO BE WORN" to allow approval of hybrids a Type I, II, and III. Types I, II, and III are proposed in addition to the existing Type V category. This SNPRM also proposes approval of hybrids for youths and small children. These proposals are in hopes that hybrid PFD's will be more widely used and potentially save more lives.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: (a) Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 78–174), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between the hours of 8 a.m. and 4 p.m. Monday through Friday. The telephone number is (202) 267–1477 for further information about submitting comments. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

(b) Copies of the Coast Guard Auxiliary Study, "Inflatable Personal Flotation Device Study," discussed in this document are available from the National Technical Information Service, Springfield, VA 22151 by referring to the publication number. The publication number for Report No. CG–M–5–81 is AD A107941.

(c) Copies of The Boat/U.S. Foundation for Boating Safety study, "Inflatable Personal Flotation Device Study: An Examination of Inflatable PFD Performance and Reliability in Public Use" dated March 11, 1993, can be obtained at the address mentioned under FOR FURTHER INFORMATION CONTACT in this section.

(d) UL Standard 1517 may be obtained from Underwriters Laboratories, Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr or Lieutenant Junior Grade Roger A. Smith, Office of Marine Safety, Security, and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1444.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this supplemental notice of proposed rulemaking (SNPRM) by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this SNPRM (CGD78–174) and the specific section or paragraph of this proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-adddressed postcard or envelope.

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

Public Hearing

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Mr. Samuel E. Wehr and Lieutenant Junior Grade Roger A. Smith, Office of Marine Safety, Security, and Environmental Protection, and LT Ralph L. Hetzel, Office of Chief Counsel.

Background and Purpose

A notice of proposed rulemaking (NPRM) was published in the Federal Register on May 29, 1985 (50 FR 21878). Corrections to the NPRM were published in the Federal Register of June 18, 1985 (50 FR 25274). The comment period on that proposal ended on July 15, 1985.

The NPRM proposed requirements for both hybrid PFD's and inflatable lifejackets. An interim final rule promulgating hybrid PFD requirements was published in the Federal Register on August 22, 1985 (50 FR 33923). Corrections to this rule were published on February 4, 1986 (51 FR 4349). Comments that addressed concerns relating to the hybrid PFD requirements were analyzed and discussed in the August 22, 1985 publication.

Proposed Amendments

This notice proposes changes to the requirements for approving hybrid inflatable PFD's and for the carriage of hybrid PFD's on commercial vessels. The requirements are self-explanatory and have been included in a list which cites each specific section number for ease of presentation.

If adopted, the changes proposed by this SNPRM may be incorporated by reference in the regulation by citing an updated revision to Underwriters Laboratories Standard 1517, Hybrid Personal Flotation Devices.

Discussion of Proposed Revisions

General. Primarily these revisions are based on the U.S. Coast Guard's experience in evaluating for approval four models of hybrids by four different manufacturers. Also considered are the discussions and comments at the 1991 and 1992 meetings of the Industry Advisory Council (IAC) of Underwriters Laboratories (UL) and the November 11, 1991 National Boating Safety Advisory Council (NBSAC).

This SNPRM proposes approval of hybrid inflatable PFD's for youths and small children. The rule changes would allow approval of recreational hybrid inflatable PFD's for weight ranges down to 14 kg (30 lb) and commercial hybrid inflatable PFDs's for persons weighing over 23 kg (50 lb). It is the Coast Guard's position that the required amount of inherent buoyancy and provision for automatic inflation mechanisms on all hybrids for small children, between 14–23 kg (30–50 lb), justifies approval of hybrids in these weight ranges.

If the requirements in the SNPRM are adopted hybrid PFD's will be approved in ten recreational and four commercial Type and size categories. Several tables

have been added to improve understanding of the various categories. Comments are requested on the clarity and reader comprehensibility of the proposed requirements for the various Types in this format.

The comments/revisions are divided into seven areas as follows:

Proposed Changes

—Changes to make use of hybrids more attractive.
—Changes to decrease repetitive testing.
—Changes to improve reliability.
—Changes made for clarification.
—Reorganization.
—Changes to 46 CFR subpart 25.25 Life Preservers and Other Lifesaving Equipment.
—Changes to make editorial corrections.

Changes To Make Use of Hybrids More Attractive

A number of changes are proposed to make hybrid inflatable PFD's more attractive to recreational boaters and manufacturers. The intent of the interim final rule was to provide regulations which ensure introduction of hybrid PFD's with little or no increased risk due to failure of the inflation system. When placed into practice the rules proved too burdensome to attract many recreational boaters to buy the PFD's and for manufacturers to produce them. As a result production and use of hybrid PFD's is very limited. To date two manufacturers have actually obtained approval, another is pending approval, and only one is currently producing. Demand from consumers for hybrid PFD's has been minimal. A market analysis to determine what advantages or disadvantages consumers may see in hybird PFD's has not been conducted. Information which may provide insight into this specific area of concern is solicited by the Coast Guard and comments from interested parties are encouraged.

The Coast Guard's efforts to encourage production and use of hybrid PFD's is based upon comments obtained from the manufacturers of hybrid PFD's during the 1991 and 1992 Underwriters Laboratories Industry Advisory Council and 1991 National Boating Safety Advisory Council. In this light, the Coast Guard proposes to change the following sections to make hybrids more appealing to boaters and to reduce the regulatory burden placed upon manufacturers:

Section 160.077–1 Scope

(b) Discussions at the 1991 Underwriters Laboratory Industry Advisory Conference indicated that consumers are discouraged from purchasing hybrid PFD's because the REQUIRED TO BE WORN limitation causes legal questions in the users mind and leaves little flexibility in use of the devices. Also, in May 1992 NBSAC recommended carriage of hybrid PFD's be allowed without being "REQUIRED TO BE WORN." To encourage consumers to purchase—and ultimately wear—hybrid PFD's the Scope will be revised to indicate that hybrid PFD's approved as Type I, II, or III devices do not have the restriction of being REQUIRED TO BE WORN.

(d) Under the interim final rule a hybrid PFD is approved only for adults. The Coast Guard proposed to amend this paragraph to include hybrid inflatable PFD's for small children weighing 14–23 kg (30–50 lb), and for youths weighing 23–40 kg (50–90 lb). Current regulations require hybrid PFD's with Type I and II performance to have automatic inflation mechanisms. Hybrid PFD's for use by small children weighing 14–23 kg (30–50 lb) would be approved a Type I or II only. Hybrid PFD's approved for use by youths would be aprpoved as Types I, II, III, and V. Hybrid PFD's for infants, persons weighing less than 14 kg are not proposed.

Section 160.077–3 Definitions

(j) The USCG is proposing adoption of standards for approval of hybrid inflatable PFD's for youths, weighing 23–40 kg (50–90 lb), and small children, weighing 14–23 kg (30–50 lb). Under the proposal this paragraph will be revised to redefine "Reference Vest" to include models CKM–1, child medium; and model CKS–2, child small, meeting subpart 160.047 of this chapter.

Section 160.077–5 Required to be Worn

(c)(1) Recreational hybrid PFD's approved as Type I, II, or III will meet carriage requirements without being worn. Therefore, this paragraph will be changed to indicate that *only Type V* recreational hybrid PFD's are "REQUIRED TO BE WORN."

(c)(2) Commercial hybrid PFD's approved as type I will meet carriage requirements without being worn. Therefore, this paragraph will be changed to indicate that *only Type V* commercial hybrid PFD's are "REQUIRED TO BE WORN."

Section 160.077–7 Type

(a) Type I, II, or III hybrid PFD's will not be bound to Type V restrictions. In keeping with the change to § 160.077–1(b) and (d) this paragraph will be revised to indicate that hybrid PFD's may be approved as Types I, II, III, or V for persons in various weight ranges over 23 kg (50 lb.) and as Types I and II for persons weighing 14–23 kg (30–50 lb). Type V is not a performance Type. Type V approval means the device is limited to special uses or conditions. Type V hybrid PFD's are "REQUIRED TO BE WORN" because they have reduced inherent buoyancy. Type V hybrid PFD's will be required to have Type I, II, or III performance when inflated.

(b) The proposed change to hybrid PFD Types approved, discussed in § 160.077–7(a) of this section, authorizes hybrid PFD's to be approved as Type I, II, III, or V for persons weighing over 23 kg (50 lb) and Types I and II for persons weighing 14–23 kg (30–50 lb). To be consistent with that change, this paragraph will be revised to indicate that hybrid PFD's must have at least Type I, II, or III performance.

Section 160.077–13 Materials—Commercial Hybrid PFD

(d) Current commercial equipment regulations only require vessels in certain operations to carry PFD's with approved PFD lights. Because PFD lights are not required for all commercial vessels the requirement that commercial hybrid PFD's be provided with a light will be deleted.

Section 160.077–15 Construction and Performance—Recreational Hybrid PFD

(b)(13) A proposed requirement will be added to provide Type I recreational hybrid PFD's with a PFD light attachment. This requirement is intended to provide vessel operators with an option to attach a PFD light, while avoiding damage to the inflation chamber due to improper light attachment.

Section 160.077–17 Additional Requirements

(b)(4) There have been no field complaints concerning failure of the inflation chamber on hybrid inflatable PFD's. Studies conducted by the USCG Auxiliary (INFLATABLE PERSONAL FLOTATION DEVICE STUDY, Report No. CG–M–5–81) and The Boat/U.S. Foundation for Boating Safety ("INFLATABLE PERSONAL FLOTATION DEVICE STUDY: An Examination of Inflatable PFD Performance and Reliability in Public Use" dated March 11, 1993) have provided additional information on fully inflatable PFD's which leads the USCG to conclude that one inflation chamber can provide reliability equivalent to dual chambers in hybrid PFD's. Therefore, the required number of inflation chambers on commercial

hybrid PFD's has been reduced from two to one. However, if the device is marked as a "lifejacket" meeting the Safety of Life at Sea (SOLAS) requirements, two inflation chambers must still be provided.

(b)(8) Adults have a wide range of chest sizes. To provide all passengers with a suitable size PFD, the Coast Guard proposes to add a requirement that adult commercial hybrid PFD's to be universally sized.

(b)(9) Operators of commercial vessels may be required to have PFD's with approved PFD lights attached. The USCG proposes to drop the requirement for commercial hybrid PFD's to be provided with an approved PFD light at time of manufacture as discussed in § 160.077–13(d). Instead, a requirement will be added to provide all commercial hybrid PFD's with a PFD light attachment at time of manufacture. This change is intended to provide vessel operators with an option to attach a PFD light, relieve manufacturers of this requirement, and avoid potential damage to the inflation chamber due to improper light attachment in the field.

Section 160.077–23 Over-pressure

(h)(4) The inflation chambers on hybrid PFD's sometimes fail to hold the required pressure during the over-pressure test although they remain serviceable. The loss of pressure is often attributed to the stretching of the inflation chamber material, thus increasing the volume of the chamber and reducing the static pressure reading. This paragraph revision is proposed to allow prestressing of the inflation chamber.

Section 160.077–23 Air Retention

(h)(5) For the same reasons discussed in the paragraph covering § 160.077–23(h)(4) above, the Coast Guard proposes revision of this paragraph to allow prestressing of the inflation chamber prior to the Air Retention test.

Section 160.077–23 Disposition of PFD's Rejected in Testing or Inspections

(k)(1) The paragraph will be changed to indicate that an authorized representative of the Commandant may also allow reworking of the lot to correct the defect in a rejected PFD lot. In addition, this paragraph will be revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in § 160.077–3(a) under "*Changes to make editorial corrections.*"

(k)(2) The paragraph will be changed to indicate that an authorized representative of the Commandant may allow reexamination or reinspection of any PFD rejected in a final lot examination or inspection. In addition, this paragraph is to be revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in § 160.077–3(a) under "*Changes to make editorial corrections.*"

Section 160.077–27 Pamphlet

(a) through (f) In keeping with § 160.077–7(a), Type I, II, and III hybrid PFDs will not have the approval limitations of a Type V hybrid PFD. In consideration of this change, a requirement will be added for a different pamphlet for each hybrid PFD Type. The proposed method of change is to adopt revisions to Underwriters Laboratories "Standard for Safety", UL 1517, section 39, "Information Pamphlet," if the necessary revisions can be made in a timely manner. In this SNPRM, the text of the proposed changes is published in its entirety where the current text of UL 1517 is not applicable to Type I, II and III hybrids. Text in this SNPRM would be used in the final rule if UL 1517 is not revised at that time.

Section 160.077–29 Manual Contents

(b) through (e) It is anticipated that the designs for Type I, II, III, or V Recreational hybrid PFDs will be different. Therefore, paragraph (b) will be revised and several new paragraphs added to require that each Type I, II, III, or V Recreational Hybrid PFD be provided with an owner's manual appropriate to that type PFD. The proposed method of change is to adopt revisions to Underwriters Laboratories "Standards for Safety", UL 1517, section 40, "Owners Manual," if the necessary revisions can be made in a timely manner. In this SNPRM, the test of the proposed changes is published in its entirety where the current text of UL 1517 is not applicable to Type I, II, and III hybrids. Text of this SNPRM would be used in the final rule if UL 1517 is not revised at that time. Former paragraph (c) is redesignated (f), which is discussed later in this preamble. The new paragraph (c) addresses the manual for Type I, II, or III recreational hybrids PFDs which do not have to be worn to meet carriage requirements. The requirements for Type V recreational hybrid PFD owner's manual remains the same but is moved to paragraph (d). The requirements of former paragraph (b)(2) are now in paragraph (e).

Section 160.077–29 Commercial Hybrid PFD

(c)(2) This paragraph will be changed to indicate that commercial hybrid PFDs approved as a "Work Vest Only" or Type I PFD must contain the information required by the Approval Certificate or in paragraph (b)(1) of this section.

Section 160.077–30 Spare Operating Components

(a) The changes to the Scope, § 160.077–1(b) allow hybrid PFDs to be approved as Type I, II, III, or V. In response to the changes in the Scope this paragraph will be amended to require all Types of hybrid PFDs to be provided with spare operating components at the time of sale.

(a)(1) There has been some confusion concerning the number of inflation medium cartridges which should be provided with the hybrid PFD at the time of sale. This paragraph has been changed to indicate that when hybrid PFD's with a manual or automatic inflation mechanism are provided with one inflation medium cartridge loaded into the inflation mechanism only two spare cartridges need to be included. When hybrid PFD's are sold without an inflation medium cartridge loaded into the inflation mechanism they must be provided with at least three cartridges.

This paragraph will also be renumbered to be consistent with standard Code of Federal Regulations (CFR) format.

(a)(2) Another area of misunderstanding has been the number of water sensitive elements to be provided at the time of sale. To clarify the required number of water sensitive elements to be provided the paragraph has been changed. When hybrid PFD's with an automatic inflation mechanism are provided with one water sensitive element loaded into the inflation mechanism only two spare water sensitive elements need to be provided. When hybrid PFD's are sold without a water sensitive element loaded into the inflation mechanism they must be provided with at least three water sensitive elements.

This paragraph will also be renumbered to be consistent with standard CFR format.

Section 160.077–31 Recreational Hybrid PFD

(c) The required marking text for recreational hybrid PFD's will be changed to be consistent with revisions to Type, discussed under § 160.077–7(a) of this section and buoyancy changes, covered under "*Changes to improve reliability*", § 160.077–19(b)(6).

Section 160.077–31 Commercial Hybrid PFD

(d) The required marking text for commercial hybrid PFD's will be changed to be consistent with revisions to Type, discussed under "*Changes to make use of hybrids more attractive*", § 160.077–7(a) and buoyancy changes, covered under "*Changes to improve reliability*", § 160.077–21(c)(3).

Section 160.077–31 All PFD's

(e)(5) The requirement for marking generic identification of the inherently buoyant material is of little value to the hybrid PFD user. Therefore, the marking requirement for generic identification of the inherently buoyant material will be deleted.

Section 160.077–31 Foam

(g)(1) The space allotted to this paragraph is greater than the importance of the information provided. The text will be revised to better balance the information provided on the label by shortening the marking requirement for flotation material buoyancy. The statement "As explained in the owner's manual, test at least once annually for buoyancy loss." is proposed to follow the minimum buoyant force statement in paragraph (c) or (d) of this section.

Section 160.077–31 Type Equivalence

(h) Because hybrid PFD's marked as Type I, II, or III will be tested as such, the Type Equivalence marking requirement will be changed to be applicable to Type V hybrids only.

Section 160.077–31 Approved Use

(j)(1) This paragraph will be amended to show that Type I commercial hybrid PFD's meet carriage requirements without restriction. Type V commercial hybrid PFD's remain "Required to Be Worn."

(j)(4) This paragraph will be added to allow manufacturers the option of leaving the approved use unspecified on the label if authorized to do so by the Commandant, U.S. Coast Guard.

Section 160.077–31 Size Ranges

(1) This paragraph will be added to specify the exact text to be used when providing PFD size information on labels for approved hybrid PFD's.

Section 160.077–33 Approval Procedures

(a)(3)(vi) The proposed changes to the Scope and Types discussed in §§ 160.077–1(d) and 160.077–7(a) of this section, authorize hybrid PFD's to be approved in various Types and size ranges. To be consistent with these changes, this paragraph will be added to require manufacturers to provide the size range of the intended wearers when applying for USCG approval of a hybrid PFD.

Changes To Decrease Repetitive Testing

Some of the required tests are repetitive and increase the cost of producing hybrid PFD's. Elimination of repetitious testing should reduce manufacturing costs which may in turn encourage increased production. With the intent to encourage greater production through lower production costs the following changes are proposed.

Section 160.077–23 Manufacturer

(b)(1)(i) Situations have occurred where extremely small lots (less than 50) of hybrid PFD's have been manufactured. Requirements for testing each lot by both the manufacturer and laboratory inspector increase the individual cost of hybrid PFD's produced in such small numbers. Reduction of repetitive testing is proposed by revising this paragraph to combine the manufacturer's and laboratory inspector's tests when five consecutive lots do not exceed a total of 250 devices. This revision would reduce repetitive testing and decrease production costs without compromising the safety of approved devices.

Section 160.077–23 Independent Laboratory

(b)(2)(ii) Historically the number of hybrid PFD's produced has been nominal. In some calendar quarters very small lots have been produced. The requirement for an independent laboratory inspection every quarter increases production costs when small lots are produced. Reduction of independent laboratory inspections is proposed by changing this paragraph to require one inspection annually when not more than five lots, with no more than 1000 devices per lot, are produced per calendar year.

(b)(2)(iv) This paragraph will be revised to show reference to paragraph (b)(2)(v) which provides an exception to the number of required records examinations, and test performance observations when not more than five lots are produced during any calendar year.

(b)(2)(v) For the same reasons stated in the proposed changes to paragraph (b)(2)(ii) of this section, this paragraph will be added to clarify that the number of required records examinations and test performance observations will be changed to one annually when not more than five lots are produced per calendar year.

Section 160.077–23 Samples

(d)(4) As per the reasons stated in proposed changes to paragraph (b)(2)(ii) of this section, this paragraph will be revised to indicate that when the total production for any five consecutive lots does not exceed 250, the manufacturer's and inspector's testing and inspection, can be combined.

(d)(5) Lots containing small numbers of hybrid PFD's are often produced. Requirements for individual tests and inspections by both the manufacturer and the independent laboratory increase production costs when small lots are produced. Reduction of repetitive test and inspections is proposed by authorizing the manufacturer's and inspector's tests to be run on the same sample at the same time when the total production for any five consecutive lots does not exceed 250.TABLE 160.077–23B, Inspector's Sampling.

Footnote 2. Field use of hybrid PFD's had proven the devices to be reliable and there have been no complaints concerning failures. To lower production costs the frequency of this test will be reduced from quarterly to annually.

Footnote 3. There have been no reports of the required marking becoming illegible on hybrid PFD's. To reduce production costs the frequency of this test will be reduced from quarterly to two annually.

Section 160.077–23 Calibration

(g)(2) Manufacturers have not exposed problems during equipment calibrations. Because equipment calibration had proven reliable the Coast Guard proposes reducing the test equipment calibration interval to once annually.

Changes To Improve Reliability

Section 160.077–15 Construction and Performance—Recreational Hybrid PFD

(b)(14) This paragraph will be added to reaction to the changes to the Scope in § 160.077–1(b) and Type discussed in § 160.077–7, under *Changes to make use of hybrids more attractive.*" To compensate for removing the REQUIRED TO BE WORN statement the Coast Guard is proposing to add additional inherent buoyancy for recreational Type I, II, and III hybrid PFD's. Deliberations from the 1991 and 1992 Underwriters Laboratories Industry Advisory Council meeting and the 1991 National Boating Safety Advisory Council concerning the amount of additional buoyancy to add to adult hybrid PFD's were considered. The options considered and discussed at those meetings included increasing

the additional buoyancy to 40 N (9 lb) or 45 N (10 lb) in Type V hybrid for adults, weighing over 40 kg (90 lb). The design variations of either are not significant in affecting wear and comfort. The Coast Guard proposes the 45 N (10 lb) option in order to provide a minimum buoyancy closer to the International Standards Organization (ISO) proposed minimum standard of 50 N.

In this paragraph the Coast Guard is also proposing buoyancy specifications for recreational hybrid PFD's for persons weighing 14–23 kg (30–50 lb) and 23–40 kg (50–90 lb). The USCG is not proposing to approve recreational hybrid inflatable PFD's for infants, weighing less than 14 kg (30 lb).

In addition, the Coast Guard is proposing to increase the total required buoyancy when inflated for Type I recreational hybrids for adults. The total buoyancy will be increased to 130 N (30 lb), in lieu of the 100 N (22 lb) inflated buoyancy requirement for adult Type II, III, or V hybrids. This proposal is based on the Coast Guard's determination that this buoyancy is the minimum amount necessary to provide performance as required by SOLAS 74/83. Depending on the PFD's design buoyancy distribution, more buoyancy may be required. Although recreational devices are not required to meet the requirements of SOLAS 74/83, the greater performance is consistent with the Type I classification and can be obtained at nominal cost.

Section 160.077–17 Construction and Performance—Commercial Hybrid PFD

(b)(10) In lieu of the Type V requirement, the Coast Guard proposes to increase the minimum inherent and minimum total buoyancies for adult Type I commercial hybrids. This proposed paragraph revision requires the minimum inherent buoyancy for adult Type I commercial hybrids to be 70 N (15.5 lb), increased from 45 N (10 lb). The Coast Guard proposes to increase the amount of total buoyancy for commercial Type I hybrids to 130 N (30 lb) in lieu of the 100 N (22 lb) total buoyancy requirement for Type V hybrids.

In addition the Coast Guard proposes to increase the required inherent buoyancy in adult type V commercial hybrid inflatable PFD's. To compensate for the loss of an extra inflation chamber, as discussed under "*Changes to make use of hybrids more attractive*" § 160.077–17(b)(4), the minimum inherent buoyancy requirement for adult type V commercial hybrid inflatable PFD's will be increased from 45 N (10 lb) to 60 N (13 lb).

Section 160.077–19 Buoyancy, Buoyancy Distribution, and Inflation Medium Retention Test

(b)(6) As discussed under the Scope in § 160.077–1(b), in "*Changes to make hybrids more attractive*" it is proposed that the "Required To Be Worn" statement be removed from Type I, II, or III hybrid PFD's. To compensate for removing the REQUIRED TO BE WORN condition, additional inherent buoyancy is proposed to be added as discussed in § 160.077–15(b)(14) which will be required to be tested for by this paragraph.

Section 160.077–21 Buoyancy and Inflation Medium Retention Test

(c)(3) In § 160.077–17 above, the Coast Guard is proposing minimum buoyancies for hybrid PFD's. This paragraph will be revised to require commercial hybrid's to be tested for and meet the minimum buoyancies specified in § 160.077–17(b)(10).

Section 160.077–21 Flotation Stability Criteria

(d)(3) (i) and (ii) These paragraphs are added to ensure commercial hybrid PFD's provide adequate freeboard commensurate with other commercial PFD's. Commercial Type I hybrids must provide at least 100 mm (4 inches) of freeboard and SOLAS lifejackets must provide at least 120 mm (4.75 inches) of freeboard.

Changes Made for Clarification

Section 160.077–1 Scope

(c) This paragraph will be revised to clarify that hybrid PFD's approved as Type I SOLAS 74/83 Life Jackets meet the requirements for carriage on all inspected commercial vessels.

Section 160.077–3 Definitions

(l) This section will be redesignated § 160.077–2 and a definition will be added to clarify that a PFD marked as a SOLAS lifejacket meets the requirements for lifejackets in the 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74/83).

Section 160.077–7 Type

(c) This section will be redesignated § 160.077–4 and this paragraph will be added to indicate that hybrid PFDs may be approved for use on recreational boats, commercial vessels or both if the applicable requirements are met.

Section 160.077–15 Performance

(a)(2)(ii) PFD's approved as Type I or II must not require second stage donning to achieve that performance. The interim final rule addresses only Type II performance. This paragraph will be revised to make it clear that PFD's marked Type I or II, or as Type V providing Type I or II performance must not require second stage donning to achieve that performance.

Section 160.077–15 Construction; General

(b)(3) This paragraph will be amended to reflect that devices approved as Type I, as well as Type II, are to be provided with at least one automatic inflation mechanism that inflates at least one chamber.

Section 160.077–15 Inflation Mechanism

(c)(2)(ii) This paragraph will be changed to clarify that dust caps, if provided, cannot be locked.

Section 160.077–15 Deflation Mechanism

(d)(3) This paragraph will be changed by replacing the word "can" with "may" to clarify that the oral inflation mechanism is an option in meeting the deflation mechanism requirement.

Section 160.077–19 Inflated Flotation Stability

(b)(3)(iii) The Coast Guard proposes to approve hybrid PFD's as Types I, II, III, and V for adult and youth sizes, and Type I and Type II for small child sizes for use on recreational boats, commercial vessels, or both if they perform accordingly and the applicable requirements are met. A requirement to test for Type I performance in accordance with the requirements specified under § 160.176–13(d)(2) will be added if the device is to be so labeled.

In response to the suggested approval Types and sizes, the requirements for inflated flotation stability need revision. The proposed method of change is to adopt revisions to Underwriters Laboratories "Standard for Safety", UL 1517, section 15 "Inflated Flotation Stability Test."

In addition, this paragraph will be revised by specifying that the reference vest used must be the appropriate size device.

Section 160.077–21 Righting Action

(c)(4)(ii) As presently written in UL 1517, section S8, one inflation chamber must be deflated during the Righting Action Test. The Coast Guard proposes to change to one chamber the current requirement for two chambers on commercial hybrid PFD's to reduce costs. This paragraph will be changed to clarify that one inflation chamber has to

be deflated only if there is more than one chamber.

Section 160.077–23 Facilities and Equipment

(g)(3)(x) This section requires manufacturers to provide the required test equipment for performance of production tests. However, the equipment necessary to perform the required Inflation Chamber Materials production tests was not included in the interim final rule. This paragraph will be added to require manufacturers to provide the Inflation Chamber Materials production test equipment.

Section 160.077–29 Manual

(f)(5) As discussed in §§ 160.077–13(d) and 160.077–17(b)(9) under *"Changes to make use of hybrids more attractive"*, the USCG proposes to drop the requirement for commercial hybrid PFDs to be provided with an approved PFD light at the time of manufacture. Former paragraph (c) of this section is redesignated (f) and this paragraph will be added to include a requirement that the manual must specify the recommended type of PFD light to be used if a light is not provided by the manufacturer. Paragraph references in this section are revised to agree with the other revisions to this section discussed earlier in this preamble.

Section 160.077–30 Temporary Marking

(b)(1) The original paragraph (b) will be renumbered (b)(1) in conjunction with the addition of paragraph (b)(2) to this section. This paragraph defines the temporary marking requirements when a hybrid PFD is sold in a ready-to-use condition. Paragraph (b)(2) is proposed to define the temporary marking requirements when a hybrid PFD is not sold in a ready-to-use condition.

(b)(2) Section 160.077–30(a)(1) (i) and (ii) will be amended to clarify that a total of three inflation medium cartridges and three water sensitive elements must be provided with the hybrid device when sold. Additionally, a cartridge and element may or may not be pre-loaded at the time of sale. This paragraph will be added to refer to the marking requirement specified in § 160.077–15(c)(3)(ii) which will be used when the device is sold without either an inflation medium cartridge, or a water sensitive element or both pre-loaded into the inflation mechanism.

Section 160.077–33 Approval Procedures

(a)(3)(vi) This section will be redesignated § 160.077–6 and this paragraph is proposed to indicate that the intended size range of wearers must be included with the application package.

Reorganization

A number of the sections within the subpart have been moved to be consistent with the organization of the inflatable lifejacket regulation at 46 CFR 160.176. The new organization with the old section numbers where applicable, and the section titles, is as follows:

New section	Old section	Section title
160.077–1	same	Scope.
160.077–2	160.077–3	Definitions.
160.077–3	160.077–5	Required to be worn.
160.077–4	160.077–7	Type.
160.077–5	160.077–9	Incorporation by Reference.
160.077–6	160.077–33	Approval Procedures.
160.077–7	160.077–35	Procedure for Approval of Design or Material Revision.
160.077–9	160.077–37	Independent Laboratories.

Remaining sections are unchanged.

Changes to 46 CFR Subpart 25.25 Life Preservers and Other Lifesaving Equipment.

Section 25.25–5 Life Preservers and Other Lifesaving Equipment Required

(f)(1) The text previously published as § 25.25–5(f)(2) has been moved to this paragraph to make it clear only Type V commercial hybrid PFD's will be required to be worn as stated in the revised § 25.25–5(f)(3).

(f)(2) The text previously published as § 25.25–5(f)(3) has been moved to this paragraph to make it clear only Type V commercial hybrid PFD's will be required to be worn as stated in the revised § 25.25–5(f)(3).

(f)(3) The Coast Guard proposes to revise the Scope in 46 CFR subpart 160.077–1(b) to indicate that hybrid PFD's approved as Type I devices do not have the restriction REQUIRED TO BE WORN. In keeping with the changes to the scope in 46 CFR subpart 160.077–1(b), the text (originally published as § 25.25–5(f)(1)) will be moved to paragraph (f)(3) and will be changed to show that Type I commercial hybrid PFD's do not have to be worn to meet carriage requirements. Type V commercial hybrid PFD's remain "Required To Be Worn."

Changes To Make Editorial Corrections

Section 160.077–3 Definition.

(a) This paragraph is revised to keep the definition of "Commandant" consistent with the definition found in Subpart 160.176–3.

(h) This paragraph is revised to drop the reference to § 175.3(b) as a result of the proposed rule changes to 33 CFR part 175 published in the **Federal Register** on November 9, 1992 (57 FR 53410).

Section 160.077–11 Flotation Material

(b)(1)(iii) The Omnibus Trade and Competitiveness Act of 1988 amended the Metric Conversion Act of 1975 to declare that each federal agency shall change over to the metric system. This paragraph is revised in accordance with the Omnibus Trade and Competitiveness Act of 1988 to include metric as well as English measurements.

Section 160.077–11 Flotation Material

(j) This paragraph is revised to change the subparagraph designation from an upper case (J) to a lower case (j).

Section 160.077–15 Construction and Performance—Recreational Hybrid PFD's

(b)(15) Section 160.077–15(b)(13) is renumbered § 160.077–15(b)(15) to incorporate the additional requirements proposed as § 160.077–15(b) (13) and (14) in this SNPRM.

Section 160.077–19 Approval Testing—Recreational Hybrid PFD

(e) This paragraph is revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in § 160.077–3(a) above.

Section 160.077–21 Approval Testing—Commercial Hybrid PFD

(g) This paragraph is revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in § 160.077–3(a) above.

Section 160.077–23 General

(a)(2) This paragraph is revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in § 160.077–3(a) above.

Section 160.077–23 Equipment

(g)(3)(iii) This paragraph is revised to show that 14 g equals 0.5 oz.

Section 160.077–23 Independent Laboratory Inspection

(j)(4)(iii) This paragraph is revised to delete the text "(G–MVI–3)" in response to the change in definition of

"Commandant," discussed in §160.077–3(a) above.

Section 160.077–31 Statement of Minimum Uniflated Bouyancy

(k) This paragraph is revised in accordance with the Omnibus Trade and Competitiveness Act of 1988 to include metric as well as English measurements.

Section 160.077–33 Approval Procedures

(b) and (c)(1) These paragraphs are revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in §160.077–3(a) above.

Section 160.077–35 Procedure for Approval of Design or Material Revision

(a) and (b) These paragraphs are revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in §160.077–3(a) above.

Section 160.077–37 Independence Laboratories

This paragraph is revised to delete the text "(G–MVI–3)" in response to the change in definition of "Commandant," discussed in § 160.077–3(a) above.

46 CFR 25.25–5 Life Preservers and Other Lifesaving Equipment Required

(f) This paragraph is amended to correct a typographical error by changing PED to PFD.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is nonsignificant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). A Regulatory Evaluation was originally placed in the rulemaking docket in 1985, reviewed in May 1991 with regard to inflatable lifejackets, and reconsidered in April 1993, concerning hybrid PFD's in association with this SNPRM. The Regulatory Evaluation, in spite of its age, was found still viable. The information obtained from the original study of inflatable lifejackets has not changed significantly in light of a comparable two and a half year investigation conducted by the Boat/U.S. Foundation for Boating Safety completed in March 1993. The annual number of casualties and drownings involving recreational boating accidents has not changed significantly since these figures were gathered. Further, the Coast Guard is proposing to improve the limited performance of devices already approved under the current regulations by requiring new Type I, II, or III hybrid devices to have increased inherent buoyancy. This Regulatory Evaluation is available in the docket for inspection or copying at the location indicated under **ADDRESSES.**

The evaluation provides an explanation of the estimated costs of these proposed regulations. There will no increase in costs to any sector under these proposed changes since hybrid PFD's are only being approved as an option to existing approved devices. The total approval costs per design are expected to be approximately $12,000 for hybrid inflatable PFD's. Costs to approve other types of PFD's are approximately $6,000. The additional cost to approve hybrid PFD's could easily be absorbed in the cost of the units produced. The cost increase per device would be small considering the number of devices produced under authorization of each approval certificate. The Coast Guard anticipates that, within the first year after issuing the final rules, one or two designs will be approved.

Production inspection costs imposed by these regulations will be approximately $1,000 for the largest size lot of inflatable lifejackets permitted. This cost is similar to that incurred for other types of approved PFD's.

The retail cost, per device, is expected to be $80–$200 for hybrid PFD's. Currently approved PFD's range in price from $7–$200. Type I devices that could be replaced by hybrid PFD's have an average cost of about $40.

These regulations provide an alternative to users for whom limited stowage space or other operational considerations make the carriage of conventional inherently buoyant PFD's impractical or inadvisable. For these users, the optional carriage of hybrid PFD's will meet their specific operational needs and will therefore justify the higher cost relative to inherently buoyant PFD's.

These regulations will have little or no effect on federal, state, or local governments except in their capacities as consumers of PFD's. Coast Guard steps to implement these proposed changes will be done within the scope of ongoing marine safety activities, and there will be no need for additional federal budget commitments.

Small Entities

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

Based upon the information in the evaluation this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. If you feel that your business qualifies as a small entity and would suffer significant, negative economic impact, please submit a comment explaining why your business qualifies as a small entity and to what degree the proposed regulations would economically affect your business. Cost data submitted will be thoroughly evaluated before publication of the final rule.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal requires separate PFD manuals for each hybrid PFD Type which may increase paperwork burdens. However, the Coast Guard has determined that this additional load will be balanced be decreasing the frequency of currently approved collection of information requirements. The current requirements will be reduced by decreasing the number of required inspections and tests.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This supplemental notice of proposed rulemaking revises established safety standards for hybrid inflatable personal flotation devices (PFD). The authority to regulate concerning PFD's is committed to the Coast Guard by statute. Furthermore, since PFD's are manufactured and used in the national marketplace, safety standards for PFD's should be of national scope to avoid unreasonably burdensome variances. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. These proposed rules are expected to have no significant effect on the environment. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects

46 CFR Part 25

Fire prevention, Marine safety, Reporting, and Recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard proposes to amend parts 25 and 160 of title 46 of the Code of Federal Regulations as follows:

PART 25—REQUIREMENTS

1. The authority citation for part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, and 4302; 49 CFR 1.46.

Subpart 25.25—Life Preservers and Other Lifesaving Equipment

2. In § 25.25–5, paragraph (f) is revised to read as follows:

§ 25.25–5 Life preservers and other lifesaving equipment required.

* * * * *

(f) On each vessel, regardless of length and regardless of whether carrying passengers for hire, an approved commercial hybrid PFD may be substituted for a life preserver, buoyant vest, or marine buoyant device required under paragraphs (b) or (c) of this section. Each hybrid PFD is accepted as meeting the requirements in paragraphs (b) or (c) of this section only if it is—

(1) Used in accordance with the conditions marketed on the PFD and in the owner's manual; and

(2) Labeled for use on commercial vessels; and

(3) In the case of a Type V commercial hybrid PFD, worn when the vessel is underway and the intended wearer is not within an enclosed space.

PART 160—LIFESAVING EQUIPMENT

3. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.077—Hybrid Inflatable Personal Flotation Devices

4. in § 160.077–1, paragraphs (b), (c), introductory text, and (d) are revised to read as follows:

§ 160.077–1 Scope.

* * * * *

(b) Other regulations in this chapter and in 33 CFR part 175 allow certain commercial vessels and recreational boats to carry Type I, II, or III hybrid PFD's to meet the carriage requirements. Type V hybrid PFD's may be substituted for other required PFD's if they are worn under conditions prescribed in their manual as required by § 160.077–29 and on their marking as prescribed in § 160.077–31. For recreational boats or boaters involved in a special activity, hybrid PFD approval may also be limited to that activity.

(c) Unless approved as a Type I SOLAS Life Jacket, a hybrid PFD on an inspected commercial vessel will be approved only—

* * * * *

(d) A hybrid PFD will be approved for adults, weighing over 40 kg (90 lb); youths, weighing 23–40 kg (50–90 lb); small children, weighing 14–23 kg (30–50 lb); or for the size range of persons for which the design has been tested, as indicated on the PFD's label.

* * * * *

5. Section 160.077–3 is redesignated § 160.077–2, and in newly redesignated § 160.077–2, paragraphs (a), (h) and (j) are revised, and paragraph (l) is added to read as follows.

§ 160.077–2 Definitions

* * * * *

(a) *Commandant* means the Chief of the Survival Systems Branch, U.S. Coast Guard, Office of Merchant Marine Safety. Address: Commandant (G–MVI–3/14), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

* * * * *

(h) *Recreational hybrid PFD* means a hybrid PFD approved for use on a recreational boat as defined in 33 CFR 175.3.

* * * * *

(j) *Reference vest* means a model AK–1, adult PFD, model CKM–1, child medium PFD; or model CKS–2, child small PFD, meeting requirements of subpart 160.047 of this chapter, except that, in lieu of the weight and displacement values prescribed in Tables 160.047–4(c)(2) and § 160.047–4(c)(4), each front insert must have the minimum weight of kapok as shown in Table 160.077–2(j). To achieve the specified volume displacement, front insert pad covering may be larger than the dimensions prescribed by § 160.047–1(b) and the width of the envelope may be increased to a circumference ¼" larger than the filled insert pad circumference.

TABLE 160.077–2(j).—REFERENCE VEST MINIMUM KAPOK WEIGHT AND VOLUME DISPLACEMENT

[Devices for adults, weighing over 40 kg (90 lb)]

Reference PFD type	Front insert (2 each)		Back insert	
	Minimum kapok weight g (oz)	Volume displacement values N (lb)	Minimum kapok weight g (oz)	Volume displacement values N (lb)
Type I * & V Commercial	319 (11.25)	54±1 12.2±0.25)	213 (7.5)	36±1 (8.2±0.25)
Type II, III, & V Recreational	234 (8.25)	40±1 (9.0±0.25)	156 (5.5)	27±1 (6.0±0.25)

* Both Recreational and Commercial.

[Devices for youths, weighing 23–40 kg (50–90 lb)]

Reference PFD type	Front insert (2 Each)		Back insert	
	Kapok weight g (oz)	Displacement values N (lb)	Kapok weight g (oz)	Displacement values N (lb)
Type I *	191 (6.75)	32±1 (7.25±0.25)	128 (4.5)	22±1 5.0±0.25)
Type II, III, and V*	156 (5.5)	27±1 (6.0±0.25)	113 (4.0)	18±1 (4.0±0.25)

*Both Recreational and Commercial.

[Devices for small children, weighing 14–23 kg (30–50 lb)]

Reference PFD type	Front insert (2 each)		Back insert	
	Kapok weight g (oz)	Displacement values N (lb)	Kapok weight g (oz)	Displacement values N (lb)
Type I *	156 (5.5)	27±1 (6±0.25)	113 (4.0)	18±1 (4.0±0.25)
Type II	128 (4.5)	21±1 (4.75±0.25)	85 (3.0)	14.5±1 (3.25±0.25)

*Both Recreational and Commercial.

* * * * *

(l) SOLAS lifejacket, in the case of a hybrid inflatable PFD, means a PFD approved as meeting the requirements for lifejackets in the 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74/83).

6. Section 160.077–5 is redesignated §160.077–3 and in newly redesignated §160.077–3 paragraphs (c) (1) and (2) are revised to read as follows:

§160.077–3 Required to be worn.

(a) As provided in Subpart 25.25 of this chapter, and in 33 CFR part 175, a Type V hybrid PFD may be used to meet the Coast Guard PFD carriage requirements in those regulations only if it is used in accordance with any requirements on the approval label. Those marked "REQUIRED TO BE WORN" must be worn whenever the vessel is underway and the intended wearer is not within an enclosed space.

* * * * *

(c) * * *

(1) Each Type V recreational hybrid PFD.

(2) Each Type V commercial hybrid PFD.

7. Section 160.077–7 is redesignated §160.077–4 and is revised to read as follows:

§160.077–4 Type.

(a) Hybrid PFD's may be approved as a Type I, II, III, or V for various ranges of persons weighing over 23 kg (50 lb), as Type I or II for persons weighing 14–23 kg (30–50 lb) or as Type I or II for other sizes which cross the foregoing size ranges and successfully pass all applicable tests. A Type V PFD is a PFD that, unlike other PFD Types, has limitations on its approval.

(b) The approval tests in this subpart require each Type V hybrid PFD to have at least Type I, II, or III performance if permitted by its intended size range.

(c) A hybrid PFD may be approved for use on recreational boats, commercial vessels or both if the applicable requirements are met.

§160.077–9 [Redesignated as §160.077–5]

8. Section 160.077–9 is redesignated §160.077–5.

9. Section 160.077–11 is amended by revising paragraph (b)(1)(iii) and the heading of paragraph (j) to read as follows:

§160.077–11 Materials—Recreational Hybrid PFD.

* * * * *

(b) * * *

(1) * * *

(iii) UL 1191 and having a V factor of 89 except that, foam with a lower V factor may be used if compensated to provide equivalent buoyancy which, after a normal service life, is not less than that of a PFD made with material having a V factor of 89 and having the required minimum inherent buoyancy when new; or

* * * * *

(j) Kapok pad covering. * * *

* * * * *

10. In §160.077–13, the heading is revised, and paragraph (d) is removed and reserved.

§160.077–13 Materials—Commercial Hybrid PFD.

* * * * *

(d) [Reserved]

* * * * *

11. In §160.077–15, the heading is revised, paragraphs (a)(2)(ii), (b)(3), (b)(13), (c)(2)(ii), and (d)(3) are revised, and paragraph (b)(14), Table 160.077–15(b)(14) and paragraph (b)(15) are added to read as follows:

§160.077–15 Construction and Performance—Recreational Hybrid PFD.

* * * * *

(a) * * *

(2) * * *

(ii) If it is to be marked as Type I or II, or Type V providing Type I or II performance, not require second stage donning to achieve that performance;

* * * * *

(b) * * *

(3) Have at least one automatic inflation mechanism that inflates at least one chamber, if marked as providing Type I or II performance;

* * * * *

(13) If marked as a Type I, must have an attachment for a PFD light securely fastened to the front shoulder area. The location should be such that if the light is attached it will not damage or impair the performance of the PFD.

(14) Provide the minimum buoyancies specified in Table 160.077–15(b)(14).

TABLE 160.077–15(b)(14).—BUOYANCY FOR RECREATIONAL HYBRID PFD'S

	Adult	Youth	Small child
Inherent Buoyancy (Deflated Condition):			
Type I	70 N (15.5 lb)	50 N (11 lb)	40 N (9 lb)
Type II	45 N (10 lb)	40 N (9 lb)	30 N (7 lb)
Type III	45 N (10 lb)	40 N (9 lb)	N/A
Type V	33 N (7.5 lb)	34 N (7.5 lb)	N/A
Total Buoyancy (Inflated Condition):			
Type I	130 N (30 lb)	80 N (18 lb)	67 N (15 lb)
Type II	100 N (22 lb)	67 N (15 lb)	53 N (12 lb)
Type III	100 N (22 lb)	67 N (15 lb)	N/A
Type V	100 N (22 lb)	67 N (15 lb)	N/A

(15) Meet any additional requirements that the Commandant may prescribe, if necessary, to approve unique or novel designs.

(c) * * *

(2) * * *

(ii) Not be able to be locked in the open or closed position (a friction-fit dust cap not being considered locking closed); and

* * * * *

(d) * * *

(3) The deflation mechanism may be the oral inflation mechanism.

* * * * *

12. In § 160.077–17, the heading and paragraph (b)(4) are revised, and paragraphs (b)(8), (9), and (10) and Table 160.077–17(b)(10) are added to read as follows:

§ 160.077–17 Construction and Performance—Commercial Hybrid PFD.

* * * * *

(b) * * *

(4) Have at least one inflation chamber, unless marked as a SOLAS lifejacket in which case it must have two inflation chambers;

* * * * *

(8) Be approved as universally sized as specified in § 160.077–15(b)(7).

(9) Each commercial hybrid PFD must have an attachment for a PFD light securely fastened to the front shoulder area. The location should be such that if the light is attached it will not damage or impair the performance of the PFD

(10) In the deflated and the inflated condition, provide buoyancies of at least the values in Table 160.077–17(b)(10).

TABLE 160.077–17(b)(10).—MINIMUM BUOYANCY OF COMMERCIAL HYBRID PFD'S

	Adult	Youth	Small child
Inherent Buoyancy (Deflated Condition):			
Type I	70 N (15.5 lb)	50 N (11 lb)	40 N (9 lb)
Type V	60 N (13 lb)	34 N (7.5 lb)	N/A
Total Buoyancy (Inflated Condition):			
Type I	130 N (30 lb)	80 N (18 lb)	67 N (15 lb)
Type V	100 N (22 lb)	67 N (15 lb)	N/A

* * * * *

13. In § 160.077–19, paragraphs (b)(3)(iii), (b)(6), and (e) are revised to read as follows:

§ 160.077–19 Approval Testing—Recreational Hybrid PFD.

* * * * *

(b) * * *

(3) * * *

(iii) *Inflated flotation stability,* 46 CFR 160.176–13(d)(2) through (5) for Type I performance and UL 1517, section 15, for Type II and Type III performance except comparisons are to be made to the appropriate size reference vest as defined in § 160.077–2(j).

* * * * *

(6) *Buoyancy, buoyancy distribution, and inflation medium retention test,* UL 1517, sections 28 and 19, except:

(i) Recreational hybrid inflatables must provide minimum buoyancy as specified in Table 160.077–15(b)(14):

(ii) The buoyancy and volume displacement of kapok buoyant inserts must be tested in accordance with the procedures prescribed in § 160.047–4(c)(4) and § 160.047–5(e)(1) in lieu of the procedures in UL 1517, section 18 and 19.

* * * * *

(e) The Commandant may prescribe additional tests, if necessary, to approve unique or novel designs.

14. In § 160.077–21, the heading, paragraphs (c)(3), (c)(4)(ii), and (g) are revised and paragraph (d)(3) is added to read as follows:

§ 160.077–21 Approval Testing—Commercial Hybrid PFD.

* * * * *

(c) * * *

(3) *Buoyancy and inflation medium retention test,* UL 1517, Section S10, except the minimum buoyancies must be as specified in the Table 160.077–17(b)(10):

(4) * * *

(ii) *Righting action test,* UL 1517, section S8. In addition to criteria stated in section S8, if a device has more than one chamber the requirements in paragraph (d) of this section must be met after each test with one of the chambers deflated.

(d) * * *

(3) The subject must have a freeboard of at least:

(i) 100 mm (4 inches) if marked as a Type I commercial hybrid PFD; or

(ii) 120 mm (4.75 inches) if approved as a SOLAS lifejacket.

* * * * *

(g) The Commandant may prescribe additional tests, if necessary, to approve unique or novel designs.

* * * * *

15. In § 160.077–23, paragraphs (a)(2), (b)(1)(i), (b)(2)(ii), (b)(2)(iv), (d)(4); (g)(2), (g)(3)(iii), (h)(4), (h)(5), (j)(4)(iii), (k)(1), (k)(2), and notes (2) and (3) to Table 160.077–23B are revised, and paragraphs (b)(2)(v) and (d)(5), and (g)(3)(x) are added to read as follows:

§ 160.077–23 Production tests and inspections.

(a) * * *

(2) The Commandant may prescribe additional production tests and inspections if needed to maintain quality control and check for compliance with the requirements in this subpart.

(b) * * *

(1) * * *

(i) Perform all required tests and examinations on each PFD lot before the independent laboratory inspector tests and inspects the lot, except as discussed in § 160.077–3(d)(5);

* * * * *

(2) * * *

(ii) Except as specified in paragraph (b)(2)(v) of this section, an inspector must perform or supervise testing and inspection of at least one PFD lot in each five lots produced.

(iii) * * *

(iv) Except as specified in paragraph (b)(2)(v) of this section, at least once each calendar quarter, the inspector must, as a check on the manufacturer's compliance with this section, examine the manufacturer's records required by § 160.077–25 and observe the manufacturer in performing each of the tests required by paragraph (h) of this section.

(v) When less than six lots during any calendar year are produced only one supervised lot inspection is required under paragraph (b)(2)(ii) of this section, and one records examination and test performance observation is required under paragraph (b)(2)(iv) of this section during that year. Each lot tested and inspected must be within seven lots of the previous lot inspected.

* * * * *

(d) * * *

(4) The number of samples selected per lot must be at least the applicable number listed in Table 160.077–23A or Table 160.077–23B, as applicable, except as allowed in paragraph (d)(5) of this section.

(5) When the total production for any five consecutive lots does not exceed 250, manufacturer's and inspector's tests can be run on the same sample(s) at the same time.

* * * * *

TABLE 160.077–23B INSPECTOR'S SAMPLING

* * * * *

Notes to Table:

* * * * *

(2) This test may be omitted if the manufacturer has previously conducted it and the inspector has conducted the test on a previous lot within the past year.

(3) One sample of each means of marking on each type of fabric or finish used in PFD construction must be tested. This test is only required when a new lot of materials is used. However, the test must be run at least every six months regardless of whether a new lot of materials is started within the past six months.

* * * * *

(g) * * *

(2) *Calibration.* The manufacturer must have the calibration of all test equipment checked at least annually by a weights and measures agency or the equipment manufacturer, distributor, or dealer.

(3) * * *

(iii) *A Scale* that has sufficient capacity to weigh a submerged sample basket. The scale must be sensitive to 14 g (0.5 oz) and must not have an error exceeding +/− 14 g (0.5 oz).

* * * * *

(x) *Inflation Chamber Materials Test Equipment.* If the required tests in paragraph (h)(2) of this section are performed by the PFD manufacturer, test equipment suitable for conducting Grab Breaking Strength, Tear Strength, Permeability, and Seam Strength tests must be available at the PFD manufacturer's facility.

* * * * *

(h) * * *

(4) *Over-pressure.* Each sample must be tested according to and meet UL 1517, section 28. Test samples may be prestressed by inflating them to a greater pressure than the required test pressure prior to initiating the test at the specified values.

(5) *Air Retention.* Each sample must be tested according to and meet UL 1517, section 36. Prior to initiating the test at the specified values, test samples may be prestressed by inflating to a pressure greater than the design pressure, but not exceeding 50 percent of the required pressure for the tests in paragraph (h)(4) of this section. Any alternate test method that decreases the length of the test must be accepted by the Commandant and must require a proportionately lower allowable pressure loss and the same percentage sensitivity and accuracy as the standard allowable loss measured with the standard instrumentation.

* * * * *

(j) * * *

(4) * * *

(iii) If the inspector rejects a lot, the Commandant must be advised immediately.

(k) * * *

(1) A rejected PFD lot may be resubmitted for testing, examination, or inspection if the manufacturer first removes and destroys each PFD having the same type of defect or, if authorized by the Commandant or an authorized representative of the Commandant, reworks the lot to correct the defect.

(2) Any PFD rejected in a final lot examination or inspection may be resubmitted for examination or inspection if all defects have been corrected and reexamination or reinspection is authorized by the Commandant or an authorized representative of the Commandant.

* * * * *

16. In § 160.077–27, paragraph (a) is revised and paragraphs (d), (e), and (f) are added to read as follows:

§ 160.077–27 Pamphlet.

(a) Each recreational hybrid PFD sold or offered for sale must be provided with a pamphlet that a prospective purchaser can read prior to purchase. The required pamphlet text must be printed verbatim and in the sequence set out in paragraph (e) or (f) of this section, as applicable. Additional information, instructions, or illustrations must not be included within the required text. The type size shall be no smaller than 8-point.

* * * * *

(d) The text specified in paragraphs (e)(2) and (f)(2) of this section must be accompanied by illustrations of the types of devices being described. The illustrations provided must be either photographs or drawings of the manufacturer's own products or illustrations of other USCG approved PFDs.

(e) For a Type I, II, and III recreational hybrid PFD the pamphlet contents must be as follows:

(1) The text in UL 1517, Section 39, item A;

(2) The following text and illustrations:

There Are Five Types of Personal Flotation Devices

This is a Type [*insert approved Type*] Hybrid inflatable PFD.

Note: The following types of PFDs are designed to perform as described in calm water and when the wearer is not wearing any other flotation material (such as a wetsuit).

Type I—A Type I PFD has the greatest required inherent buoyancy and turns most unconscious persons in the water from a face down position to a vertical and slightly backward position, therefore, greatly increasing one's chances of survival. The Type I PFD is suitable for all waters, especially for cruising on waters where there is a probability of delayed rescue, such as large bodies of water where it is not likely that a significant number of boats will be in close proximity. This type PFD is the most effective of all types in rough water. It is reversible and available in only two sizes—Adult (over 40 kg (90lb)) and child (less than 40 kg (90 lb)) which are universal sizes (designed for all persons in the appropriate category).

[Insert Illustration of Type I PFD]

Type II—A Type II PFD turns most wearers to a vertical and slightly backward position

in the water. The turning action is not as pronounced as with a Type I and the device will not turn as many persons under the same conditions as the Type I. The Type II PFD is usually more comfortable to wear than the Type I. This Type PFD is normally sized for ease of emergency donning and is available in the following sizes: Adult (over 40 kg (90 lb)), Medium Child (23–40 kg (50–90 lb)), and two categories of Small Child (less than 23 kg (50 lb) or less than 14 kg (30 lb). Additionally, some models are sized by chest sizes. You may prefer to use the Type II where there is a probability of quick rescue such as areas where it is common for other persons to be engaged in boating, fishing and other water activities.

[Insert Illustration of Type II PFD]

Type III—The Type III PFD allows the wearer to assume a back of vertical position, and the device will maintain the wearer in that position and have no tendency to turn the wearer face down. It is not designed to turn the wearer face up. A Type III is generally more comfortable than a Type II, comes in a variety of styles which should be matched to the individual use, and is often the best choice for water sports, such as skiing, hunting, fishing, canoeing, and kayaking. This Type PFD normally comes in many chest sizes and weight ranges; however, some universal sizes are available. You may also prefer to use the Type III where there is a probability of quick rescue such as areas where it is common for other persons to be engaged in boating, fishing, and other water activities.

[Insert Illustration of Type III PFD]

Hybrid Inflatable Type I, II, or III— A Type I, II, or III Hybrid PFD is an inflatable device which can be the most comfortable and has a minimal amount of buoyancy when deflated and significantly increased buoyancy when inflated (See accompanying table for actual buoyancy for your Type of hybrid). When inflated it turns the wearer with the action of a Type I, II, or III PFD as indicated on its label. This type of PFD provides an extra degree of comfort to the boater who will accept the responsibility for care of the device and in-water trials to check its performance. The buoyancy provided by this PFD when not inflated will not float approximately 90 percent of the boating public. Therefore, it is not recommended for non-swimmers unless worn with enough inflation to float the wearer. It is suitable for use where there is or is not a probability of quick rescue depending on the performance type marked on it. Type I hybrids are suitable where rescue may be slow coming, while Types II and III are good only when there is a chance of fast rescue. Type I hybrids are approved in three weight ranges, adult, for persons weighing over 40 kg (90 lb); youth, for persons weighing 23–40 kg (50–90); and small child, for persons weighing 14–23 kg (30–50 lb). Type II hybrid PFDs are approved in the same size ranges as Type I hybrids but may be available in a number of chest sizes and in universal adult sizes. Type III hybrids are only approved in adult and youth sizes but may also be available in a number of chest sizes and in universal adult sizes."

[Insert Illustration of Hybrid PFD]

Type IV—A Type IV PFD is normally thrown or tossed to a person who has fallen overbroad and is intended to be grasped and held by the person until rescued. While the Type IV is acceptable in place of a wearable device in certain instances, this type is suitable only where there is a probability of quick rescue such as areas where it is common for other persons to be engaged in boating, fishing, and other water activities. It is not recommended for use by non-swimmers and children.

[Insert Illustration of Type IV PFD]

Type V (General)—A Type V PFD is a PFD approved for restricted uses or activities such as board sailing, or commercial white water rafting. These PFDs are not usually suitable for other boating activities. The label on the PFD indicates whether a particular design of Type V PFD can be used in a specific application, what restrictions or limitations apply, and its performance type.

Type V Hybrid—A Type V Hybrid PFD is an inflatable device which can be the most comfortable and has a minimum deflated buoyancy and significantly more buoyancy when inflated. In order for the device to be acceptable for use on recreational boats, it must be worn except when the boat is not underway or when the user is below deck. When inflated it turns the wearer similar to the action provided by a Type I, II, or III PFD (the type of performance is indicated on the label). This type of PFD provides an extra degree of comfort to the boater who will wear a PFD by having a reducd amount of inherent buoyancy. However, the user must accept the responsibility for care of the device and in-water trials to check its performance. The buoyancy provided by this PFD when it is not inflated will float approximately 70 percent of the boating public. Therefore, it is not recommended for non-swimmers unless worn with enough inflation to float the wearer. It is suitable for use where there is or is not a probability of quick rescue depending on the performance type marked on it. This type of PFD is approved in two sizes, adult, for persons weighing over 40 kg (90 lb); and youth, for persons weighing 23–40 kg (50–90 lb), and may be available in a number of chest sizes and in universal adult sizes.

(3) Insert a table with the applicable PFD Type, size, and buoyancy values from Table 160.077–15(b)(14); and

(4) The text in UL 1517, Section 39, items D, E, and F.

(f) For a Type V recreational hybrid PFD the pamphlet contents must be as follows:

(1) The text in UL 1517, Section 39, item A;

(2) The following text and illustrations:

There Are Five Types of Personal Flotation Devices

This is a Type [*insert approved Type*] Hybrid Inflatable PFD.

Note: The following types of PFDs are designed to perform as described in calm water and when the wearer is not wearing any other flotation material (such as a wetsuit).

Type I—A Type I PFD has the greatest required inherent buoyancy and turns most unconscious persons in the water from a face down position to a vertical and slightly backward position, therefore, greatly increasing one's chances of survival. The Type I PFD is suitable for all waters, especially for cruising on waters where there is a probability of delayed rescue, such as large bodies of water where it is not likely that a significant number of boats will be in close proximity. This type PFD is the most effective of all types in rough water. It is reversible and available in only two sizes—Adult (over 40 kg (90 lb)) and child (less than 40 kg (90 lb.)) which are universal sizes (designed to for all persons in the appropriate category).

[Insert Illustration of Type I PFD]

Type II—A Type II PFD turns most wearers to a vertical and slightly backward position in the water. The turning action is not as pronounced as with a Type I and the device will not turn as many persons under the same conditions as the Type I. The Type II PFD is usually more comfortable to wear than the Type I. This type PFD is normally sized for ease of emergency donning and is available in the following sizes: Adult (over 40 kg (90 lb)), Medium Child (23–40 kg (50–90 lb)), and two categories of Small Child (less than 23 kg (50 lb) or less than 14 kg (30 lb)). Additionally, some models are sized by chest sizes. You may prefer to use the Type II where there is a probability of quick rescue such as areas where it is common for other persons to be engaged in boating, fishing and other water activities.

[Insert Illustration of Type II PFD]

Type III—The Type III PFD allows the wearer to assume a back of vertical position, and the device will maintain the wearer in that position and have no tendency to turn the wearer face down. It is not designed to turn the wearer face up. A Type III is generally more comfortable than Type II, comes in a variety of styles which should be matched to the individual use, and is often the best choice for water sports, such as skiing, hunting, fishing, canoeing, and kayaking. This type PFD normally comes in many chest sizes and weight ranges; however, some universal sizes are available. You may also prefer to use the Type III where there is a probability of quick rescue such as areas where it is common for other persons to be engaged in boating, fishing, and other water activities.

[Insert Illustration of Type III PFD]

Hybrid Inflatable Type I, II, or III—A Type I, II, or III Hybrid PFD is an inflatable device which can be the most comfortable and has a minimal amount of buoyancy when deflated and significantly increased buoyancy when inflated (See accompanying table for actual buoyancy for your Type of hybrid). When inflated it turns the wearer with the action of a Type I, II, or III PFD as indicated on its label. This type of PFD provides an extra degree of comfort to the

boater who will accept the responsibility for care of the device and in-water trials to check its performance. The buoyancy provided by this PFD when not inflated will float approximately 90 percent of the boating public. Therefore, it is not recommended for non-swimmers unless worn with enough inflation to float the wearer. It is suitable for use where there is or is not a probability of quick rescue depending on the performance type marked on it. Type I hybrids are suitable where rescue may be slow coming, while Type II and III are good only when there is a chance of fast rescue. Type I hybrids are approved in three weight ranges, adult, for persons weighing over 40 kg (90 lb); youth, for persons weighing 23–40 kg (50–90 lb); and small child, for persons weighing 14–23 kg (30–50 lb). Type II hybrid PFDs are approved in the same size ranges as Type I hybrids but may be available in a number of chest sizes and in universal adult sizes. Type III hybrids are only approved in adult and youth sizes but may also be available in a number of chest sizes and in universal adult sizes.

Type IV—A Type IV PFD is normally thrown or tossed to a person who has fallen overboard and is intended to be grasped and held by the person until rescued. While the Type IV is acceptable in place of a wearable device in certain instances, this type is suitable only where there is a probability of quick rescue such as areas where it is common for other persons to be engaged in boating, fishing, and other water activities. It is not recommended for use by non-swimmers and children.

[Insert Illustration of Type IV PFD]

Type V (General)—A Type V PFD is a PFD approved for restricted uses or activities such as board sailing, or commercial white water rafting. These PFDs are not usually suitable for other boating activities. The label on the PFD indicates whether a particular design of Type V PFD can be used in a specific application, what restrictions or limitations apply, and its performance type.

Type V Hybrid—A Type V Hybrid PFD is an inflatable device which can be the most comfortable and has a minimum of [*insert the applicable minimum deflated and inflated values from Table 160.077–15(b)(14) for adult and youth sizes*]. In order for the device to be acceptable for use on recreational boats, it must be worn except when the boat is not underway or when the user is below deck. When inflated it turns the wearer similar to the action provided by a Type I, II, or III PFD (the type of performance is indicated on the label). This type of PFD provides an extra degree of comfort to the boater who will wear a PFD by having a reduced amount of inherent buoyancy. However, the user must accept the responsibility for care of the device and inwater trials to check its performance. The buoyancy provided by this PFD when it is not inflated will float approximately 70 percent of the boating public. Therefore, it is not recommended for non-swimmers unless worn with enough inflation to float the wearer. It is suitable for use where there is or is not a probability of quick rescue depending on the performance type marked on it. This type of PFD is approved in two sizes, adult, for persons weighing over 40 kg (90 lb); and youth, for persons weighing 23–40 kg (50–90 lb), and may be available in a number of chest sizes and in universal adult sizes.

[Insert Illustration of Hybrid PFD]

(3) Insert a table with the applicable PFD Type, size, and buoyancy values from Table 160.077–15(b)(14); and

(4) The text in UL 1517, Section 39, items C, D, E, and F.

17. In § 160.077–29, paragraphs (b) and (c) are revised, and paragraphs (d), (e) and (f) are added to read as follows:

§ 160.077–29 PFD manuals.

(a) * * *

(b) *Manual Contents.* Each recreational and commercial hybrid PFD sold or offered for sale must be provided with an owner's manual for its PFD Type. The manual text for a recreational hybrid PFD must be printed verbatim and in the sequence set out in paragraph (c) or (d) of this section, as applicable. The manual for a commercial hybrid PFD must meet the requirements of paragraph (f) of this section. Additional information, instructions, or illustrations may be included within the required text if there is no contradiction to the required information.

(c) *Type I, II or III Recreation Hybrid PFD.* For a Type I, II, and III recreation hybrid PFD the manual contents must be as follows:

(1) The following text:

Hybrid Limitations

This PFD has limited inherent buoyancy which means YOU MAY HAVE TO INFLATE IT TO FLOAT, and the inflatable portion requires maintenance. In the event of an accident or fall overboard, the chance of any PFD aiding in your survival are greatly increased if it is worn. Wearing this PFD makes its limitation much less significant.

There is only one way to find out if you will float without inflation. That is to try this PFD in the water as explained in [insert reference to the section of the manual that discusses how to test the PFD]. If you have not tested this device in accordance with these guidelines, the Coast Guard does not recommend it use.

(2) Instructions on use including instructions on donning, inflation, replenishing inflation mechanisms, and recommended practice operation;

(3) Instructions on how to properly inspect and maintain the PFD, and recommendations concerning frequency of inspection;

(4) Instructions on how to get the PFD repaired;

(5) The text in UL 1517, Section 40, items B and D;

(6) The following text:

Why Do You Need a PFD?

A PFD provides buoyancy to help keep your head above water and to help you stay face up. The average in-water-weight of an adult is only about 5 to 10 pounds. The buoyancy provided by most PFDs will support that weight in water. However, the hybrid Type I, II, or III PFD may be an exception. The uninflated buoyancy provided by this PFD may only float 90 percent of the boating public. This is because the inherent buoyancy has been reduced to make it more comfortable to wear. So, you may not float adequately without inflating the device. Once the device is inflated you will have a minimum of 22 lb of buoyancy for adult sizes, which is more than enough to float everyone. (See table above [*below*] for the actual minimum buoyancy for different Types of hybrids.) Your body weight alone does not determine your in-water-weight. Since there is no simple method of determining your weight in water, you should try the device in the water in both it's deflated and inflated condition.

(7) The text in UL 1517, Section 40, item G;

(8) The following text:

Wear Your PFD

Your PFD won't help you if you don't have it on. It is well-known that most boating accidents occur on calm water during a clear sunny day. It is also true that in approximately 80 percent of all boating accident fatalities, the victim did not use a PFD. Don't wait until it's too late. Non-swimmers and children especially should wear their PFD at all times when on or near the water. Hybrid Type I, II, III or V PFDs are not recommended for non-swimmers unless inflated enough to float the wearer.

(9) The text in UL 1517, Section 40, items I, J, K, and L; and

(10) Insert a table with the applicable PFD Type, size, and buoyancy values from Table 160.077–15(b)(14) or provide a reference to appropriate pamphlet table, if the pamphlet is combined with the manual.

(d) *Type V Recreational Hybrid PFD.* For a Type V recreational hybrid PFD the manual contents must be as follows:

(1) The text in UL 1517, Section 40, item A;

(2) Instructions on use including instructions on donning, inflation, replenishing inflation mechanisms, and recommended practice operation;

(3) Instructions on how to properly inspect and maintain the PFD, and recommendations concerning frequency of inspection;

(4) Instructions on how to get the PFD repaired; and

(5) The text in UL 1517, section 40, that is not included under paragraph (d)(1) of this section.

(e) *Sale with manual.* No person may sell or offer for sale a recreational hybrid PFD unless the manual required by this section is provided with it.

(f) *Commercial Hybrid PFD.* (1) For a commercial hybrid PFD that is "Required To Be Worn" the manual

must meet the requirements of paragraph (d) of this section.

(2) For a commercial hybrid PFD approved as a "Work Vest Only" or Type I PFD the manual must meet the requirements of either paragraphs (f) (3) and (4) or of paragraph (c) of this section, titled Type I, II, or III Recreational Hybrid PFD.

(3) Each commercial hybrid PFD approved with special purpose limitation must have a user's manual that—

(i) Explains in detail the proper care, maintenance, stowage, and use of the PFD; and

(ii) Includes any other safety information as prescribed by the approval certificate.

(4) If the manual required in paragraph (f)(3) of this section calls for inspection or service by vessel personnel, the manual must—

(i) Specify personnel training or qualifications needed;

(ii) Explain how to identify the PFDs that need to be inspected; and

(iii) Have an inspection and service log, unless the information is otherwise recorded.

(5) If a PFD light approved under subpart 161.012 is not provided at time of sale, the manual must specify the recommended type of light to be used.

18. In § 160.077–30, paragraphs (a) and (b) are revised to read as follows:

§ 160.077–30 Spare operating components and temporary marking.

(a) *Spare operating components.* Each recreational and commercial hybrid PFD must—

(1) If it has a manual or automatic inflation mechanism and is packaged and sold with one inflation medium cartridge loaded into the inflation mechanism, have at least two additional spare inflation cartridges packaged with it. If it is sold without an inflation medium cartridge loaded into the inflation mechanism, it must be packaged and sold with at least three cartridges; and

(2) If it has an automatic inflation mechanism and is packaged and sold with one water sensitive element loaded into the inflation mechanism, have at least two additional spare water sensitive elements packaged with it. If it is sold without a water sensitive element loaded into the inflation mechanism, it must be packaged and sold with at least three water sensitive elements.

(b) *Temporary marking.* Each recreational and commercial hybrid PFD which is sold—

(1) In a ready-to-use condition but, which has covers or restraints to inhibit tampering with the inflation mechanism prior to sale, must have any such covers or restraints conspicuously marked "REMOVE IMMEDIATELY AFTER PURCHASE." or

(2) Without an inflation medium cartridge, a water sensitive element, or both pre-loaded into the inflation mechanism, must include the markings required in § 160.077–15(c)(3)(ii).

19. In § 160.077–31, paragraphs (c), (d), (g)(1), (h), (j), introductory text, (j)(1), and (k) are revised, paragraph (l) is added, and paragraph (e)(5) is removed and reserved to read as follows:

§ 160.077–31 PFD Marking.

* * * * *

(c) *Recreational Hybrid PFD.* Each recreational hybrid PFD must be marked with the following text using capital letters where shown and be presented in the exact order shown:

[*see paragraph (l) of this section for exact text to be used here*]

Type [*I, II, III, or V, as applicable*] PFD: Recreational hybrid inflatable—Approved for use only on recreational boats. [*For Type V only*] REQUIRED TO BE WORN to meet Coast Guard carriage requirements (except for persons in enclosed spaces as explained in owner's manual).

You May Have To Inflate This PFD To Float.

This PFD requires maintenance.

Try this PFD in the water to see if it will float you without inflation.

[*For Type V only*] When inflated this PFD provides performance equivalent to a (*see paragraph (h) of this section for exact test to be used here*).

When new, this PFD provides a minimum buoyant force of [*see Table 160.077–15(b)(14) for appropriate value to be used here*] uninflated and [*see Table 160.077–15(b)(14) for appropriate value to be used here*] when inflated.

A pamphlet and owner's manual must be provided with this PFD.

(d) *Commercial Hybrid PFD.* Each commercial hybrid PFD must be marked with the following text using capital letters where shown and be presented in the exact order shown:

[*see paragraph (l) (1) or (2) of this section for exact text to be used here*]

Type [*"I" or "V Work Vest Only", as applicable*] PFD: Commercial hybrid inflatable—Approved for use on [*see paragraph (j) of this section for exact text to be used here*].

You May Have To Inflate This PFD To Float.

This PFD must be maintained, stowed, and used only in accordance with the owner's manual.

Try this PFD in the water to see if it will float you without inflation.

[*For Type V only*] When inflated this PFD provides performance equivalent to a (*see paragraph (h) of this section for exact test to be used here*).

When new, this PFD provides a minimum buoyant force of [*see Table 160.077–17(b)(9) for appropriate value to be used here*] uninflated and [*see Table 160.077–17(b)(9) for appropriate value to be used here*] when inflated.

(e) * * *

(5) [Reserved]

* * * * *

(g) *Flotation material buoyancy loss—*

(1) *Foam.* When flotation foam having a V factor of less than 94 is used, the statement "As explained in the owner's manual, test at least annually for buoyancy loss." must follow the minimum buoyant force statement in paragraph (c) or (d) of this section.

(2) * * *

(h) *Type equivalence.* The exact text to be inserted for Type V hybrid PFD's will be one of the following type equivalents as noted on the Approval Certificate.

* * * * *

(j) *Approved use.* Unless the Commandant has authorized omitting the display of approved use, the exact text to be inserted will be one or more of the following statements as noted on the approval certificate.

(1) "uninspected commercial vessels,"

(a) "Type I Hybrid PFD" or

(b) "Type V Hybrid PFD—required to be worn to meet Coast Guard carriage requirements (except for persons in enclosed spaces as explained in owner's manual)."

* * * * *

(k) *Statement of minimum uninflated buoyancy.* Instead of the statement concerning minimum buoyancy required by paragraphs (c) and (d) of this section, a hybrid PFD may be marked with a minimum buoyant force of greater than the values on Table 160.077–15(b)(14) for recreational hybrid PFD's or Table 160.077–17(b)(10) for commercial hybrid PFD's, if specified on the approved plans and specifications.

(l) *Size ranges.* (1) *Adult*—For persons weighing more than 40 kg (90 lb).

(2) *Youth*—For persons weighing 23–40 kg (50–90 lb).

(3) *Child Small*—For persons weighing 14–23 kg (30–50 lb).

20. Section *160.077–33* is redesignated § 160.077–6, and in newly redesignated § 160.077–6 paragraphs (b), introductory text, and (c)(1) are revised, and paragraph (a)(3)(vi) is added to read as follows:

§ 160.077–6 Approval Procedures.

(a) * * *

(3) * * *

(vi) The intended size range of wearer.

* * * * *

(b) *Waiver of tests.* If a manufacturer requests that any test in this subpart be waived, one of the following must be provided to the Commandant as justification for the waiver:

* * * * *

(c) * * *

(1) Meets other requirements prescribed by the Commandant in place of or in addition to requirements in this subpart; and

* * * * *

21. Section 160.077–35 is redesignated § 160.077–7 and in newly redesignated § 160.077–7, paragraphs (a) and (b) are revised to read as follows:

§ 160.077–7 Procedure for approval of design or material revision.

(a) Each change in design, material, or construction of an approved PFD must be approved by the Commandant before being used in any production of PFD's.

(b) Determinations of equivalence of design, construction, and materials may be made only by the Commandant.

22. Section 160.077–37 is redesignated § 160.077–9 and is revised to read as follows:

§ 160.077–9 Independent laboratories.

A list of independent laboratories which have been accepted by the Commandant for conduction or supervision the tests and inspections required by this subpart, and for making material certifications required by § 160.077–11, may be obtained from the Commandant.

Dated: January 11, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–1135 Filed 1–14–94; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 59, No. 11
Tuesday, January 18, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TMD–93–00–4]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting applications for fiscal year 1994 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,300,000 in the Federal budget for Fiscal Year 1994. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals for marketing studies. Only State Departments of Agriculture or State Agencies are eligible for funds.

DATES: Applications will be accepted through June 1, 1994.

ADDRESSES: Proposals may be sent to Dr. Harold S. Ricker, Assistant Director, Transportation and Marketing Division, Agricultural Marketing Service (AMS), USDA, room 4006 South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The program is a matching fund program designed to assist State Departments of Agriculture in conducting feasibility studies related to the marketing of agricultural products. Organizations interested in conducting a marketing study should contact their State Department of Agriculture Marketing Division to discuss their proposal.

Mutually acceptable proposals must be submitted through the State Office and be accompanied by a completed SF 424 and detailed budget statement. FSMIP funds may not be used for advertising or the purchase of equipment or facilities. Guidelines may be obtained from your State Departments of Agriculture or the above AMS contact.

In terms of objectives, the States are encouraged to submit proposals regarding:

(1) Studies to identify new crops, markets, and marketing systems for agricultural products, both domestically and internationally;

(2) studies to improve efficiency of the marketing system to enhance competitiveness and profitability; and

(3) studies to help maintain product quality through new handling, processing, and distribution techniques. Proposals addressing other marketing objectives will also receive consideration.

FSMIP is listed in the "Catalog of Federal Domestic Assistance" under number 10.156 and subject agencies must adhere to title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Dated: January 10, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–1124 Filed 1–14–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 93–160–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of October 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list

of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of October 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under "FOR FURTHER INFORMATION CONTACT."

Done in Washington, DC, this 12th day of January 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–1121 Filed 1–14–94; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

Market Promotion Program, Fiscal Year 1994

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Market Promotion Program for Fiscal Year 1994.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, room 4932–S, 14th and Independence Avenue, Washington, DC 20250–1042, Telephone: (202) 720–5521.

SUPPLEMENTARY INFORMATION: Section 203 of the Agricultural Trade Act of 1978, as amended, directs the Commodity Credit Corporation (CCC) to "carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program." Assistance under this program may be provided in the form of funds of, or commodities owned by, the CCC, as determined appropriate by the Secretary.

MPP will be implemented in accordance with the regulations set forth in 7 CFR part 1485, subpart B, (56 FR 40745), August 16, 1991, as revised by the interim rule published in the **Federal Register** on November 17, 1993 (58 FR 60549). The Administrator of the Foreign Agricultural Service (FAS), who is Vice President of CCC, is authorized to enter into agreements with nonprofit trade associations, regional associations of state departments of agriculture, state groups, and U.S. private firms and cooperatives to provide cost-share assistance to carry-out approved export promotion activities. Eligibility for promotional support will be limited to those agricultural commodities or products which are at least 50 percent U.S. origin by weight, excluding added water. Except for activities conducted by small-sized entities operating through state groups, promotional activities will only be undertaken to counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of a foreign country, through cost-share assistance, in order to encourage the development, maintenance, and expansion of commercial export markets for U.S. agricultural commodities and products. Assistance may be provided for brand promotion activities when such activities are determined by the Administrator, FAS, to be an effective means of carrying out the purposes of the MPP.

To be considered by CCC, applicants must fully comply with the procedures specified in 7 CFR part 1485. Criteria for the allocation of CCC resources in the MPP are set forth in 7 CFR 1485.15.

The applicant must provide the information required by 7 CFR part 1485 and may include any other factors the applicant deems appropriate. All applications (original plus two copies) must be received by 5 p.m. eastern time, February 23, 1994 at the following address:

Overnight delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, 4932–S, 14th and Independence Avenue, Washington, DC 20250–1042.

Regular Postal Delivery: U.S. Department of Agriculture, Marketing Operations Staff, Ag Box 1042, Washington, DC 20250–1042.

For more detailed information regarding application procedures, revised strategic plan formats, and other aspects of the MPP, contact the Marketing Operations Staff, Foreign Agricultural Service, at the applicable address above or telephone (202) 720–5521. Comments regarding the conduct of the MPP may be directed to either address as applicable.

Signed at Washington, DC on January 11, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 94–1122 Filed 1–14–94; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held February 2, 1994, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of export controls affecting sensors & lasers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, EA/OAS—room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of

meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 10, 1994.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–1138 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held February 1, 1994, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public. The public is encouraged to address the issue of current control limits on "routers" and to bring to the meeting specific examples of current models.
4. Update on COCOM.
5. Discussion of Foreign Availability Assessment.
6. Discussion on U.S. Interim Licensing Policy.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Unit, ODAS/EA/BXA, room 3886, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 10, 1994.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–1152 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held February 3, 1994, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Briefing on COCOM/Follow on Organization.
5. Discussion of recent revisions to the Export Admin. Regulations.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA room 3886, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–482–2583.

Dated: January 10, 1994.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–1139 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket No. 4–94]

Foreign-Trade Subzone 59A—Lincoln, NE; Request for Expanded Manufacturing Authority; Kawasaki Motors Manufacturing Corporation, U.S.A., Plant (Utility Work Trucks)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kawasaki Motors

Manufacturing Corporation, U.S.A. (KMM), operator of FTZ Subzone 59A, at the KMM manufacturing facilities, Lincoln, Nebraska, requesting authority to manufacture utility work trucks under zone procedures. 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 January 10, 1994.

Subzone 59A was approved by the FTZ Board in 1980 with activity granted for the manufacture of motorcycles, jet skis, and four wheel all terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). An application for expansion of the subzone is currently pending (Doc. 56–93, 58 FR 63335, 12–1–93).

KMM is now requesting subzone authority for the manufacture of certain off-road, gasoline engine utility work trucks (called "Mules") (payload capacity up to 1,200 pounds) for the U.S. market and export. Foreign-sourced components and subassemblies comprise approximately 40 percent of the finished vehicles' material value and include: engines, transmissions, calipers, wheels, and tires (duty rate range: free–15.4%). All steel mill products will be sourced domestically.

Zone procedures would exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rate that applies to the finished work trucks (HTSUS# 8709.19.0030, duty free) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve KMM's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is on March 21, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 4, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 11133 "O" Street, Omaha, Nebraska 68137.

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

Dated: January 12, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–1140 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with December anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with December anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than December 31, 1994.

Antidumping duty proceedings	Period to be reviewed
Canada:	
Elemental Sulphur	
A–122–047	
Alberta Energy Co., Ltd., Allied-Signal Inc., Brimstone Export, Burza Resources, Fanchem, Husky Oil, Ltd., Mobil Oil Canada, Ltd., Norcen Energy Resources, Petrosul, Saratoga Processing Co., Ltd., Sulbow Minerals	12/1/92–11/30/93
Mexico:	
Circular Welded Non-Alloy Steel Pipe	
A–201–805	
Villacero Tuberia Nacional, S.A. de C.V.	4/28/92–10/31/93
People's Republic of China:	
Ceiling Fans	
A–570–807	
Wiseman Enterprises, Woldrich, J&P Manufacturing Enterprises, Kong Luen, Mightide, Southern King International, SMC Marketing, King of Fans, CEC Electrical Manufacturing (International) Company/CEC Industries (Shenghen) Ltd./CEC (USA) Texas Group Inc., Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd.	12/1/92–11/30/93
All other exporters of ceiling fans from the People's Republic of China are conditionally covered by this review	
Taiwan:	
Carbon Steel Butt-Weld Pipe Fittings	
A–583–605	
C.M. Pipe Fittings Co., Ltd., Rigid Industries Co., Ltd., Gei Bey Corporation, Chup Hsin Enterprises	12/1/92–11/30/93
Certain Small Business Telephone Systems and Subassemblies Thereof	
A–583–806	
Bitronic Telecoms Co., Ltd.	12/1/92–11/30/93
Certain Welded Stainless Steel Pipe	
A–583–815	
Ta Chen Stainless Pipe Co., Ltd.	3/1/93–11/30/93
Countervailing Duty Proceedings:	
Mexico:	
Porcelain-on-Steel Cookware	
C–201–505	1/1/93–12/31/93

Antidumping duty proceedings	Period to be reviewed
Suspension Agreements:	
Singapore:	
Certain Refrigeration Compressors	
C–559–001	4/1/92–3/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with sections 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1993).

Dated: January 12, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–1143 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–437–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination of antidumping duty administrative reviews.

SUMMARY: In response to requests from the respondent, Magyar Gordulocsapagy Muvek, the Department of Commerce initiated administrative reviews of the respondent on July 22, 1992 for the period June 1, 1991 through May 31, 1992, and on July 21, 1993 for the period June 1, 1992 through May 31, 1993. We are now terminating these reviews.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: Breck J. Richardson or Elisabeth Urfer, Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of exports to the United States for the period June 1, 1991 through May 31, 1992 (57 FR 32521) on July 22, 1992, and for the period June 1, 1992 through May 31, 1993 (58 FR 39007) on July 21, 1993. On December 22, 1993, Magyar Gordulocsapagy Muvek (MGM) and the Timken Company, the Petitioner, jointly asked the Department to terminate these reviews, stating that both parties sought to conserve resources, and MGM withdrew its requests for reviews.

In accordance with 19 CFR 353.22(a)(5), "the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than ninety days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so."

Under the circumstances in which no interested party objects to the request for termination, we believe that it is reasonable to extend the ninety-day time limit governing the withdrawal of requests for administrative reviews. Thus, in view of MGM's and Timken's request of December 22, 1993, the Department is terminating these reviews.

These terminations are in accordance with 19 CFR 353.22(a)(5).

Dated: January 11, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–1141 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–604; A–588–054]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative reviews.

SUMMARY: On December 9, 1993, the Department of Commerce (the Department) published in the **Federal Register** the final results of administrative reviews of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan, and the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Japan. The reviews of the finding covered the periods from August 1, 1990 through September 30, 1991, and October 1, 1991 through September 30, 1992. The reviews of the order covered the periods from October 1, 1990 through September 30, 1991, and October 1, 1991 through September 30, 1992.

Subsequent to the publication of the final results, the Department discovered that it had made a ministerial error affecting the margins for Nachi-Fujikoshi. The Department also discovered ministerial errors affecting the margins for NSK Ltd., Koyo Seiko, and NTN Corporation; however, since appeals have already been filed by these parties, we are precluded from correcting these errors at this time.

We have corrected the error affecting Nachi by assigning to Nachi in the A–588–604 reviews of both periods the proper rate to be used as best information available (BIA), 40.37 percent.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1993, the Department published in the **Federal Register** the final results of its 1990–91 and 1991–92 administrative review of the antidumpting finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan, and the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Japan (58 FR 64720).

Subsequent to the publication of the final results, the Department discovered that it had made a ministerial error affecting Nachi.

Section 353.28(d) of the Department's regulations defines a "ministerial error" as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial" (19 CFR 353.28(d)). Although Nachi submitted comments on November 1, 1993, concerning the rate it should receive as BIA in the A–588–604 reviews, the Department inadvertently failed to address these comments in the final results. Nachi pointed out that the rate of 45.95 percent, which the Department assigned to Nachi in the final results, is a rate from a previous review of the order which was later amended to correct clerical errors. We agree with Nachi, and have assigned, as

BIA, a rate of 40.37 percent to Nachi in both reviews of the A–588–604 case.

Amended Final Results of Review

As a result of this correction, we have determined that the rate for Nachi is 40.37 percent for tapered roller bearings and components thereof (A–588–604) for the periods October 1, 1990 through September 30, 1991, and October 1, 1991 through September 30, 1992.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following cash deposit requirements are amended as follows: A–588–604: Nachi 40.37 percent. All other cash deposit requirements remain unchanged from the notice of December 9, 1993.

These deposit requirements shall remain in effect until the publication of the final results of the next administrative review.

This amendment to the final results of administrative reviews and this notice are in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and section 353.28(c) of the Department's regulations (19 CFR 353.28(c)).

Dated: January 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–1142 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Greensboro-Winston Salem-High Point, NC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The above solicitation was previously advertised on Thursday, August 12, 1993. This solicitation has been cancelled.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Robert M. Henderson,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 94–1102 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 011094 B]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: See "**SUPPLEMENTARY INFORMATION**" for dates of scheduled meetings.

ADDRESSES: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: Dr. D. James Baker, Under Secretary for Oceans and Atmosphere, Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230, with a copy sent to Kevin Chu, Office of International Affairs, room 14247, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, Office of International Affairs, room 14247, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Phone: (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year, NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC, which is usually held in the spring or summer. The major purpose of the preparatory meetings is to provide for input in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling.

Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information. Such measures are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of position papers during 1994 is as follows:

January 3, 1994—Publish in the **Federal Register** the Agency views on: (1) The current population levels and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with provisions of the IWC aboriginal/subsistence whaling management scheme, and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

January 11, 1994 (2 p.m., room 6009, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC)—Meeting of the Interagency Committee to review past events and to begin preparation for the 1994 Annual Meeting of the IWC. As with all such meetings, interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to the Under Secretary for Oceans and Atmosphere at the above address.

February 1, 1994—Nominations for the U.S. Delegation to the May IWC meetings are due to the U.S. Commissioner, with a copy to Kevin Chu at the address above. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

February 20–24, 1994, Norfolk Island, Australia—Intersessional meeting of the IWC to discuss a proposal to create a whale sanctuary in the Antarctic. (Attendance is limited to official delegations and observers from inter-governmental organizations and non-member governments.)

March 10, 1994 (2 p.m., room 6009, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC)—Tentative Interagency Committee meeting date to review recent events relating to the IWC, to continue preparations for the upcoming IWC Annual Meeting.

April 21, 1994 (2 p.m., room 6009, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC)—Tentative Interagency Committee Meeting date for finalizing preparations for 1991 IWC meetings.

May 23–27, 1994, Puerto Vallarta, Mexico—46th Annual Meeting of the International Whaling Commission.

Dated: January 4, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–1091 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 011094A]

Whaling: Report of Independent Scientific Peer Review of the Catch Limit Algorithm of the International Whaling Commission's Revised Management Procedure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of report.

SUMMARY: The National Marine Fisheries Service has conducted an independent scientific peer review of the International Whaling Commission's Revised Management Procedure. This notice announces the availability of the report of the peer review panel and solicits comments on the report.

DATES: Comments should be received by NMFS by March 4, 1994.

ADDRESSES: Requests for copies of the report of the peer review panel and comments on that report should be directed to: Dr. Michael P. Sissenwine, Senior Scientist for Fisheries, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steven Swartz (301) 713–2239.

SUPPLEMENTARY INFORMATION: At its 1993 Annual Meeting, the Scientific Committee of the International Whaling Commission (IWC) unanimously recommended that the Commission adopt a specific Revised Management Procedure (RMP), including a method for calculating catch quotas for commercial whaling—the "catch limit algorithn" (CLA). As part of the U.S. evaluation of the proposed procedure, NMFS conducted an independent scientific peer review of the RMP and its CLA during October 1993.

This review assessed the performance and applicability of the RMP as a management tool by considering the rationale used to develop the RMP, the simulation trials conducted by the IWC's Scientific Committee, and the structure and content of the various components of the RMP as a means of addressing the stated goals of the IWC. In addition, the review addressed the data requirements for a monitoring program to assess the performance of the RMP, as was discussed by the IWC at its 1993 Annual Meeting in Kyoto, Japan. The review did not address any other questions related to commercial whaling or whaling policy.

The Panel concluded that the Catch Limit Algorithm (CLA) appears to be robust and conservative in meeting the stated goals of the Commission in so far as the simulation trials that have been made to date are concerned. In the Panel's opinion, the testing procedure used is a valid one and the set of statistical standards used was adequate. The Panel concluded that, provided the required protocol of implementation trials and reviews is followed, the CLA could safely be used for a short period of time, after which a thorough review would be needed. However, the Panel also agreed that the range of simulation trials that have been made to date is not yet sufficiently extensive, in several regards, so as to gain its full confidence. It therefore recommended that additional robustness trials be made as part of the implementation process.

Based on the results of the peer review, the preliminary view of the National Marine Fisheries Services is that it would seem reasonable from a scientific point of view for the IWC to adopt the RMP in principle, but that no quotas should be calculated until the additional implementation trials called for by the peer review panel are completed.

By this notice NMFS is announcing the availability of this report and is seeking comments on it.

Dated: January 10, 1994.

C. Karnella,

Acting Program Management Officer.

[FR Doc. 94–1092 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Federal Scientific, Technical, and Engineering Information Transfer; Meeting

January 11, 1994.

NTIS invites representatives of federal agencies to attend an open briefing and discussion covering the procedures, definitions, roles, and benefits of a newly published regulation covering the transfer of Federal scientific, technical, and engineering information (STEI). The briefing will be held at the Department of Commerce, Herbert C. Hoover Building, room 4830, on January 26, 1994, 2 to 4 p.m.

Section 108 of the American Technology Preeminence Act (Pub. L. 102–245) requires all federal agencies to transfer Government-financed STEI to the National Technical Information Service (NTIS). The final rule establishing procedures to be used was published in **Federal Register** (Vol. 15, No. 1, January 3, 1994, pp 6–12) as 15 CFR part 1180. The procedures become effective on February 1, 1994.

The purpose of the Act is to promote the national economic competitiveness of the United States and to help U.S. industries speed the development of new products and processes. Centralized availability of Government-sponsored STEI to industry, as well as to other users, is an important means toward this end. NTIS was created for this purpose in 1950. Until now, the transfer of federal STEI products to NTIS was voluntary.

Recent policy statements have stressed the need for better dissemination of Government information, including the President's report on Technology for America's Economic Growth and the June 1993 release of OMB Circular A–130. The latter makes dissemination of information a responsibility of each Government agency. The procedures established in the new regulation can aid Federal agencies to meet their obligations under these policies as well.

The meeting is open to all Federal employees, but attendance is limited to 75 persons. Persons interested in attending should contact Mr. Walter L. Finch, Associate Director for Business Development, NTIS, 5285 Port Royal Road, Springfield, VA 22161 (telephone: 703–487–4674). Additional briefings will be scheduled if needed.

Robert R. Freeman,

Director, Office of Acquisitions.

[FR Doc. 94–1094 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–04–M

National Telecommunications and Information Administration (NTIA)

Public Hearing on Universal Service and the National Information Infrastructure

NTIA and the California Public Utilities Commission (CPUC) will hold a public hearing, titled "Telecommunications to Serve the Cities—Universal Service in Urban America" in Los Angeles, California at the California Museum of Science and Industry (Exposition Park) on January 20, 1994, from 8 a.m. to 4 p.m. Demonstrations of advanced telecommunications technologies will be held from 11:30 a.m. to 4 p.m. at the California Afro-American Museum at 600 Exposition Park.

To register for the hearing, fax or mail to Yvette Barrett, NTIA, room 4888, Herbert C. Hoover Building, 14th and Constitution Ave. NW., Washington, DC 20230, fax (202) 482–6173, on or before January 19, 1994, the following information: Name, title, company/affiliation, address, telephone number, fax number, areas of interest, and whether written testimony is intended to be provided for the record.

FOR FURTHER INFORMATION CONTACT: Joann Anderson, (202) 482–1880, Office of Policy Analysis and Development.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–1164 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–60–P

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on February 8, 1994.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance.
(2) Automation.
(3) Strategic Planning.
(4) Current Trademark Office Practice Issues.
(5) International Trademark Law.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305–9464.

Dated: January 7, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–1052 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

January 10, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea establishes a specific limit for cotton and man-made fiber woven pile fabric in Category 224–V (currently 224pt.) for the period beginning on January 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 10, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on January 19, 1994, you are directed to establish a limit at 10,774,382 square meters for part-Category 224–V (currently 224pt.)[1] for the period January 1, 1994 through December 31, 1994. Part-Category 224–V shall remain subject to the Group I limit.

Imports charged to the category limit for the period January 1, 1993 through December 31, 1993, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–1137 Filed 1–14–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 17, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: January 12, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension.

Title: Performance Report for the School, College, and University Partnerships (SCUP) Program.

Frequency: At the end of the grant period.

Affected Public: State or local governments; non-profit institutions.

Reporting Burden: Responses: 12; Burden Hours: 180.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: SCUP grantees are required to submit a final performance report at the end of the grant period. These reports are used to evaluate project accomplishments, collect impact data, and identify exemplary projects.

[FR Doc. 94–1118 Filed 1–14–94; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Nominations Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 7, 1994.

TIME: 9 a.m. to 4:30 p.m.

LOCATION: Holiday Inn Crown Plaza, 333 Poydras Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–42333; Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Nominations Committee of the National Assessment Governing Board will meet in closed session on February 7, 1994, from 9 a.m. until 4:30 p.m., to review and discuss personal qualifications and experience of nominees recommended to serve as Board members in the following respective categories: Chief State School Officer, Eighth Grade Classroom Teacher, Fourth Grade Classroom Teacher, Elementary School Principal, Secondary School Principal, and General Public. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. until 5 p.m.

Dated: January 12, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–1120 Filed 1–14–94; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: January 31, 1994, beginning at 9 a.m. and ending at 5 p.m.; and February 1, 1994, beginning at 8:30 a.m. and ending at 12 noon, but closed from 8:30 a.m. to 9:30 a.m.

ADDRESSES: Wyndham Bristol Hotel, Potomac Rooms I and II, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets, SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress has directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. Also, the Omnibus Budget Reconciliation Act of 1993 directed the Advisory Committee to conduct an evaluation of the Direct Lending and FFEL programs and submit a report to Congress and the Secretary of Education on an annual basis.

The proposed agenda includes: (a) A discussion on evaluating the Direct Lending and FFEL programs; (b) an update on the delivery system; (c) an update on other ED initiatives; and (d) an Advisory Committee regulatory update and planning session for the upcoming year's agenda.

The Advisory Committee will meet in Washington, DC on January 31, 1994, from 9 a.m. to 5 p.m., and on February 1, from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 9:30 a.m. to elect a new chairman and discuss other personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552(b) will be available to the public within fourteen days of the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except federal holidays.

Dated: January 11, 1994.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 94–1125 Filed 1–14–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2506–002; Michigan]

Mead Corporation, Paper Publishing Division; Availability of Environmental Assessment

January 11, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the existing Escanaba Hydroelectric Project located on the Escanaba River in Marquette and Delta Counties, near Escanaba, Michigan, and has prepared a draft Environmental Assessment (EA) for the proposed project.

Copies of the EA are available for review in the Public Reference Branch, room 3104 the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2506–002 to all comments. For further information, please contact Nancy Beals, Environmental Assessment Coordinator, at (202) 219–2178.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1069 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–126–006]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on January 6, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 94B, with a proposed effective date of January 7, 1994.

Algonquin states that Sheet No. 94B provides for the recovery of certain transition costs incurred as a consequence of Algonquin's implementation of Order No. 636. Algonquin states that the specific purpose of this filing is to update the net balance in Algonquin's Account No. 191 filing to reflect an additional charge and refunds from upstream suppliers.

Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place this tariff sheet into effect as requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's

Rules and Regulations. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1072 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–73–000]

ANR Pipeline Company; Technical Conference

January 11, 1994.

In the Commission's order issued on December 30, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Wednesday, January 26, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1077 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–59–000]

Northern Natural Gas Company; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on January 5, 1994, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sixth Revised Sheet No. 53, with an effective date of January 1, 1994.

Northern states that it has filed Sixth Revised Sheet No. 53 to establish the December 1993 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its shippers.

Northern states that copies of the filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1080 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–107–001]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

January 11, 1994.

Take notice that on January 7, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of February 1, 1994:

Third Revised Volume No. 1

Original Sheet No. 292
Sheet No. 293

Northwest states that the purpose of this filing is to supplement Northwest's December 30, 1993 filing in Docket No. RP94–107–000. Sheet No. 292 lists the allocation of the Account No. 191 balance to Northwest's affected customers. Sheet Nos. 292 and 293 were previously reserved together for future use. Now that Sheet No. 292 is being used to accommodate the filing discussed above, Sheet No. 293 is being filed as a separate sheet reserved for future use.

Northwest states that a copy of this filing has been served upon each of Northwest's affected sales customers, all intervenors in Docket No. RS92–69, consolidated with the official service list in all dockets to which the order pertained, and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1079 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–22–001]

Overthrust Pipeline Company; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on December 21, 1993, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 7 and Original Sheet No. 7A, to be effective December 1, 1993.

Overthrust states that the tariff sheets revise Rate Schedule T to provide that transportation service contracted for under that rate schedule may be released and provided to replacement shippers according to the terms and conditions of First Revised Volume No. 1A of Overthrust's FERC Gas Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1073 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–24–001]

Pacific Gas Transmission Company; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on December 13, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with an effective date of November 15, 1993:

Substitute First Revised Sheet No. 6
Substitute Original Sheet No. 6–A

Substitute Original Sheet No. 15
Substitute Original Sheet No. 124

PGT states that it is submitting these tariff sheets to comply with the Commission's order of November 12, 1993 in this proceeding to specify the procedures by which Pacific Gas and Electric Company may pay its Gas Supply Restructuring (GSR) Direct Bill in a lump sum payment. PGT also states that it is submitting these tariff sheets to revise the monthly amounts applicable under the extended payments schedules to reflect the change in carrying costs caused by the Commission's deferral of the effective date until November 15, 1993.

PGT further states that copies of its filing were served on all parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.212. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1074 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–67–001]

Southern Natural Gas Company; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on January 7, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, First Substitute First Revised Sheet Nos. 29–31, with a proposed effective date of January 1, 1994.

Southern states that these tariff sheets have been filed in compliance with the Commission's Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing a Hearing issued in the captioned proceeding on December 30, 1993. Pursuant to such order, Southern states that the instant tariff sheets contain revised GSR allocation factors which reflect throughput for the twelve months ending June 30, 1993 and firm contract entitlements as of November 1, 1993. Southern notes that the acceptance of the instant tariff sheets will be subject to the Commission's disposition of certain tariff sheets revising its GSR Cost billing mechanism filed on January 7, 1994, in Docket No. RS92–10–004 *et al.*

Southern states that copies of its filing are being served upon all of its customers, intervening parties and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1075 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–19–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on December 21, 1993, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that on June 4, 1993, as amended September 30, 1993, for Algonquin Gas Transmission Company pursuant to Docket Nos. RS92–28, et al.; on September 3, 1993, as amended on October 8, 1993, for National Fuel Gas Supply Corporation pursuant to Docket Nos. RS92–21, et al.; on October 8, 1993 for Equitrans, Inc. pursuant to Docket Nos. RS92–15, et al.; and on November 4, 1993 for CNG Transmission Corporation pursuant to Docket Nos. RS92–14, et al.; and Carnegie Natural Gas Company pursuant to Docket Nos. RS92–30, et al.; Texas Eastern filed tariff sheets to recognize the restructuring of the above-listed customers, and to reflect modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, as required (collectively, "Restructuring Filings").

Texas Eastern states that it is submitting 3rd Sub Original Sheet Nos. 571 and 572, 2nd Sub First Revised Sheet Nos. 571 and 572, Sub Second Revised Sheet Nos. 571 and 572, Sub Third Revised Sheet No. 571 and Sub Original Sheet No. 572A, to correct an inadvertent error in the "ELA" Total Operational Segment Capacity Entitlements Column for Morganza, Louisiana in each of the Restructuring Filings. The appropriate number should be 760, not 755. Accordingly, the Total for such column should be 1,643,883, not 1,643,878.

The proposed effective dates of the tariff sheets are June 1, 1993, August 1, 1993, September 1, 1993 and October 1, 1993, the effective dates of each of the Restructuring Filings.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1070 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP83–137–036s and RP85–31–008]

Transcontinental Gas Pipe Line Corporation; Report of Refunds

January 11, 1994.

Take notice that on December 16, 1993, Transcontinental Gas Pipe Line Corporation (Transco) filed with the Federal Energy Regulatory Commission a refund report pursuant to the Commission's order of November 3, 1993, which accepted a previous refund plan subject to modifications.

Transco states that the report shows that on November 30, 1993, Transco refunded principal of $4,759,651.45

plus $5,774,677.11 in interest. The refunds are intended to return the difference between the volumes charged to Transco's transportation customers at an average retention factor of 6.1 percent, and the average retention factor of 4.8 percent found just and reasonable for the period from April 1984 through March 1987.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 19, 1994. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1071 Filed 4–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–70–001]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

January 11, 1994.

Take notice that on January 6, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 257, proposed to be effective January 1, 1994.

TGPL states that the purpose of the instant filing is to comply with the Commission's letter order issued December 30, 1993 in the referenced docket (December 30 Order). The December 30 Order accepted, subject to conditions, TGPL's tariff filing of December 1, 1993 wherein TGPL proposed to revise Section 7(a) of the General Terms and Conditions of its Volume No. 1 Tariff to provide the option of payment by check for a customer whose monthly invoice(s) does not exceed an aggregate of $25,000. Such filing was accepted subject to TGPL refiling, within 15 days of the December 30 Order, to increase the threshold amount to $100,000. TGPL states that the tariff sheet submitted in the instant filing complies with the December 30 Order.

TGPL states that copies of the filing are being mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1076 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–75–001]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

January 11, 1994.

Take notice that on January 7, 1994 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 2490, to be effective January 1, 1994.

TGPL states that the filing is being made in compliance with the Commission's December 29, 1993 letter order in this proceeding. On December 1, 1993, TGPL submitted tariff sheets establishing a new Rate Schedule NS and associated Form of Service Agreement, to make unbundled sales under its Order No. 636 blanket sales certificate. The December 29 letter order accepted such tariff sheets, subject to modification, to become effective on January 1, 1994. One of the potential points of delivery described in Rate Schedule NS, as filed, was "any point on another interstate or intrastate pipeline". In the December 29 letter order, the Commission found that this language "could be interpreted to permit (TGPL) to transport its sales gas through its system and make the sale after a delivery to a downstream LDC or other pipeline." The Commission further found that "such an interpretation, whether intentional or not, would be inconsistent with Order No. 636." The December 29 letter order, therefore, required TGPL to modify Section 4 of Rate Schedule NS to add to the point of sale definition, part (b), the language "prior to entry into Seller's pipeline system." TGPL states that Substitute Original Sheet No. 249–O reflects such modification.

TGPL states that it is serving copies of the filing on its customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 19, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1078 Filed 1–14–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4827–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0874.05; Application for Federal Assistance (Construction); was approved 11/30/93; OMB No. 2030–0018; expires 11/30/96.

EPA ICR No. 1150.03; NSPS for Polymer Manufacturing Industry, Subpart DDD Recordkeeping and Reporting Requirements; was approved 11/30/93; OMB No. 2060–0145; expires 11/30/96.

EPA ICR No. 1127.04; NSPS for Hot Mix Asphalt Facilities Subpart I; was approved 11/24/93; OMB No. 2060–0083; expires 11/30/96.

EPA ICR No. 0997.04; NSPS for Petroleum Dry Cleaners, Information

Requirements, Subpart JJJ; was approved 11/24/93; OMB No. 2060–0079; expires 11/30/96.

EPA ICR No. 1130.04; NSPS for Grain Elevators, Subpart DD Information Requirements; was approved 11/24/93; OMB No. 2060–0082; expires 11/30/96.

EPA ICR No. 1660.01; 1993 Screener Questionnaires for the Transportation Equipment Cleaning Industry; was approved 11/24/93; OMB No. 2040–0166; expires 11/30/96.

EPA ICR No. 1039.06; Monthly Progress Reports; was approved 11/24/93; OMB No. 2030–0005; expires 11/30/96.

EPA ICR No. 1037.04; Oral and Written Purchase Orders; was approved 11/24/93; OMB No. 2030–0007; expires 11/30/96.

EPA ICR No. 1178.03; NSPS for Reactor Processes in the Synthetic Organic Chemical Manufacturing Industry; was approved 11/08/93; OMB No. 2060–0269; expires 11/30/96.

EPA ICR No. 1654.01; Reporting Requirements under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program; was approved 11/24/93; OMB No. 2040–0164; expires 11/30/96.

EPA ICR No. 1633.02; Acid Rain Permits, Allowance System, Emissions Monitoring, Excess Emissions, and Appeals Regulations under Title IV of the Clean Air Act Amendments of 1990; was approved 11/19/93; OMB No. 2060–0258; expires 01/31/96.

Corrections to Previously Approved ICRS

EPA ICR No. 1564.03; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units, Subpart DC; approved 09/21/93; OMB No. 2060–0202; expiration date is 09/30/96 instead of 09/30/93.

EPA ICR No. 1052.04; NSPS for New Stationary Sources, Fossil Fueled Fired Steam Generating Units, Subpart D; approved 09/30/93; OMB No. 2060–0026; expiration date is 09/30/96 instead of 09/30/93.

EPA ICR No. 1362.02; Coke Oven Battery National Emission Standards; approved 02/18/93; OMB No. 2060–0253; expiration date is 10/31/96 instead of 02/28/96.

Dated: December 23, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–1134 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00371; FRL–4754–9]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2–day meeting, beginning on January 31, 1994, and ending on February 1, 1994. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Ground Water Protection and Pesticide Disposal will meet on Monday, January 31, 1994, from 8:30 a.m. to 5 p.m. and on Tuesday, February 1, 1994, beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport - Crystal City, 300 Army-Navy Drive, Arlington, VA, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee includes the following:

1. Reports from the SFIREG Working Committee members on State ground water protection pesticide disposal projects.

2. Discussion of pesticide metabolites.

3. Update on SMP clearinghouse and generic guidance.

4. Discussion of bulk repackaging questions and answers.

5. Discussion of waste pesticide programs in States.

6. Update on land disposal of pesticide contaminated soils.

7. Other topics as appropriate.

Dated: January 11, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–1127 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064–0052.

Expiration Date of OMB Clearance: March 31, 1994.

Respondents: Insured state nonmember commercial and savings banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,310.

Number of Responses per Respondent: 4.

Total Annual Responses: 29,240.

Average Number of Hours per Response: 26.28.

Total Annual Burden Hours: 768,374.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0052, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before March 21, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) filed quarterly by

insured state nonmember commercial and savings banks. The Federal Reserve Board (FRB) and the Office of the Comptroller of the Currency (OCC) are also submitting these changes for OMB review for the banks under their supervision.

The revisions to the Call Reports that are the subject of this request were approved by the FFIEC on December 16, 1993, and are scheduled to take effect as of March 31, 1994. Unless otherwise indicated, these Call Report changes apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks will be advised that they may provide reasonable estimates for any of the new items in their March 31, 1994, Call Reports for which the requested information is not readily available. The changes for which OMB approval is requested are summarized as follows:

(1) Revisions to the reporting of securities in the following Call Report schedules to reflect the effect of Financial Accounting Standards Board Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FASB 115), which banks must adopt for Call Report purposes for fiscal years beginning after December 15, 1993:

(a) In the body of Schedule RC–B, "Securities," the amortized cost and fair value for each type of held-to-maturity securities would be reported separately from the amortized cost and fair value for each type of available-for-sale securities. On the FFIEC 031 report forms only, the breakdown of securities (not held in trading accounts) in domestic offices by type of security would be moved from the body of Schedule RC–B to Schedule RC–H, "Selected Balance Sheet Items for Domestic Offices."

(b) In the Memoranda section of Schedule RC–B, Memorandum items 3, "Taxable securities issued by states and political subdivisions in the U.S.," and 5, "Debt securities held for sale," would be deleted. A new Memorandum item would be added for the amortized cost of held-to-maturity securities sold or transferred during the calendar year-to-date.

(c) On Schedule RC, "Balance Sheet," item 2, "Securities," would be split into separate items for "Available-for-sale securities" and "Held-to-maturity securities," while item 26.b would be recaptioned as "Net unrealized holding gains (losses) on available-for-sale securities."

(d) On Schedule RI, "Income Statement," item 6, "Gains (losses) on securities not held in trading accounts," would be split into separate items for realized gains (losses) on available-for-sale securities and held-to-maturity securities.

(e) On Schedule RI–A, "Changes in Equity Capital," item 11 would be recaptioned as "Change in net unrealized holding gains (losses) on available-for-sale securities."

(2) On Schedule RC–M, "Memoranda," new items would be added for the amount of mutual funds (segregated into four categories) and annuities sold during the quarter by the reporting bank and by third parties with whom the bank has a contractual sales arrangement. In Schedule RI, "Income Statement," a Memorandum item would be added for fee income from the sale and servicing of mutual funds and annuities.

(3) On Schedule RC, "Balance Sheet," item 16 for "Other borrowed money" would be split into separate subitems for amounts with an original maturity of one year or less and for amounts with an original maturity of more than one year. In addition, a new category of liabilities, "Trading liabilities," would begin to be reported on Schedule RC.

(4) On Schedule RC–O, "Other Data for Deposit Insurance Assessments," a new item would be added for "Benefit-Responsive 'Depository Institution Investment Contracts'."

(5) On the FFIEC 031 and 032 report forms only:

(a) Schedule RC–D would be revised to cover both trading assets and liabilities, including new items for three categories of mortgage-backed securities, trading assets in foreign offices (on the FFIEC 031 report forms), revaluation gains (broken down between domestic offices and foreign offices on the FFIEC 031) and revaluation losses on interest rate, foreign exchange rate, and other commodity and equity contracts, and liability for short positions. In addition to the banks with $1 billion or more in total assets that are currently required to complete Schedule RC–D, those banks with $2 billion or more in par/notional amount of interest rate, foreign exchange rate, and other commodity and equity contracts (and less than $1 billion in total assets) will be required to complete the schedule.

(b) Schedule RC–N, which collects past due and nonaccrual data, would see the addition of new items for interest rate, foreign exchange rate, and other commodity and equity contracts that are past due 30 through 89 days or past due 90 days or more. Banks would report the book value of amounts carried as assets on the balance sheet for such past due contracts as well as the replacement cost of those past due contracts with a positive replacement cost. Consistent with the existing treatment of Schedule RC–N data, individual bank information on contracts past due 30 through 89 days would be treated as confidential.

(6) On Schedule RC–C, part I, "Loans and Leases," a single total would be reported for "Obligations (other than securities and leases) of states and political subdivisions in the U.S." and the separate items for taxable and tax-exempt obligations would be eliminated.

(7) Memorandum items 1 and 2 on Schedule RC–L, "Off-Balance Sheet Items," which collect data on certain loan sales and purchases during the quarter would be deleted.

In addition, the general Call Report instruction precluding assets and liabilities from being offset or otherwise netted unless specifically required by the instructions would be modified to allow on-balance sheet amounts associated with conditional and exchange contracts (e.g., forwards, interest rate swaps, and options) to be offset in accordance with Financial Accounting Standards Board Interpretation No. 39. This would be an interim treatment pending clarification of an interpretive issue under Interpretation No. 39.

Dated: January 11, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–1085 Filed 1–14–94; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Change in the notice of public meeting.

SUMMARY: The meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation will not be held in Washington, D.C. as published in the **Federal Register** of December 27, 1993, vol. 58, no. 246, page 68418. The primary speakers for the open portion of the meeting are unable to attend due to scheduling conflicts.

DATES: The open meeting was scheduled for Monday, January 24, 1994, from 9

a.m. to 4:30 p.m. A closed portion of the meeting to review grant applications will be conducted through a telephone conference call on Tuesday, January 25, 1994, 12 noon.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594–1459.

Dated: January 12, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–1166 Filed 1–14–94; 8:45 am]

BILLING CODE 4160–90–U

Food and Drug Administration

[Docket No. 94N–0004]

Animal Drug Export; Abamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck Research Laboratories, Division of Merck & Co., Inc., has filed an application requesting approval for export of the bulk animal drug substance abamectin to the Netherlands where it will be further exported to Australia or New Zealand either as the bulk material or as the formulated injectable product. The drug is administered to cattle for the control of certain internal and external parasites.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, has filed an application requesting approval for the export of the bulk animal drug substance abamectin to the Netherlands where it will be further exported to Australia or New Zealand either as the bulk material or as the formulated injectable product. The drug is administered to cattle for control of certain internal and external parasites. The application was received and filed in the Center for Veterinary Medicine on December 30, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 28, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: January 7, 1994.

Robert C. Livingston,

Director, Office of New Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–1047 Filed 1–14–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on February 8–9, 1994, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9:45 a.m. on February 8, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:45 a.m. until recess on February 8 and from 8:30 a.m. until adjournment on February 9. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the 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 3C26, 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. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C22, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1149 Filed 1–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel

Dates of Meeting: February 2, 1994

Time of Meeting: 8 a.m. until adjournment

Place of Meeting: 6120 Executive Boulevard

Agenda: Review of proposals received in response to RFP–NIH–NIDCD–DC–93–05, Speech and Language Development in the Deaf Child of Hearing Parents: Approaches to Intervention.

Contact Person: Dr. Marilyn Semmes, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1150 Filed 1–14–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for February through March 1994, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the scientific review administrator at least two weeks in advance of the meeting.

Study section	February–March 1994 meetings	Time	Location
AIDS and Related Research 1, Dr. Sami Mayyasi, Tel. 301–594–7073 ..	Feb. 28–Mar. 1 ...	8:30	Holiday Inn, Chevy Chase, MD.
AIDS and Related Research 2, Dr. Gilbert Meier, Tel. 301–594–7118	Mar. 18	8:00	Holiday Inn, Chevy Chase, MD.
AIDS and Related Research 3, Dr. Marcel Pons, Tel. 301–594–7210	Feb. 28–Mar. 2 ...	8:30	Holiday Inn, Bethesda, MD.
AIDS and Related Research 4, Dr. Mohindar Poonian, Tel. 301–594–7112.	Feb. 26–27	8:30	Hawthorne Suites, Charlestown, SC.
AIDS and Related Research 5, Dr. Mohindar Poonian, Tel. 301–594–7112.	Mar. 11	8:30	Holiday Inn, Crowne Plaza, Rockville, MD.
AIDS and Related Research 6, Dr. Gilbert Meier, Tel. 301–594–7118	Mar. 4	8:00	Holiday Inn, Chevy Chase, MD.
AIDS and Related Research 7, Dr. Gilbert Meier, Tel. 301–594–7118	Mar. 11	8:00	Holiday Inn, Chevy Chase, MD.
Behavioral and Neurosciences–1, Dr. Luigi Giacometti, Tel. 301–594–7132.	Feb. 23–25	8:30	St. James Hotel, Washington, DC.
Behavioral and Neurosciences–2, Dr. Peggy McCardle, Tel. 301–594–7293.	Feb. 18	8:30	St. James Hotel, Washington, DC.
Biological Sciences–1, Dr. James R. King, Tel. 301–594–7097	Feb. 23–25	8:30	St. James Hotel, Washington, DC.
Biological Sciences–2, Dr. Camilla Day, Tel. 301–594–7389	Feb. 22–24	8:30	Holiday Inn, Bethesda, MD.
Biological Sciences–3, Dr. Nancy Pearson, Tel. 301–594–7388	Feb. 15–17	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Tel. 301–594–7170	Feb. 21–23	8:30	Holiday Inn, Crowne Plaza, Rockville, MD.
Clinical Sciences–1, Mrs. Jo Pelham, Tel. 301–594–7254	Feb. 17–18	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences–2, Mrs. Jo Pelham, Tel. 301–594–7254	Feb. 24–25	8:00	Holiday Inn, Chevy Chase, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Tel. 301–594–7262.	Feb. 16–18	8:30	Holiday Inn, Chevy Chase, MD.
International and Cooperative Projects, Dr. G. B. Warren, Tel. 301–594–7289.	Feb. 23–25	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Physiological Sciences, Dr. Nicholas Mazarella, Tel. 301–594–7098	Mar. 3–4	8:00	Holiday Inn, Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1151 Filed 1–14–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[ID–030–04–4059, 4060–02]

Road Closures

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, effective immediately, that the following four (4) logging roads located within the Deep Creek Resource Area of Power and Oneida Counties are closed to all motorized vehicle traffic.

Legal description of the sole point of access:

1. Portage Canyon Timber Salvage Road

T. 11 S., R. 32 E.,
Section 5: SE¼NW¼, Boise Meridian, Power County Idaho

2. John Evans Timber Salvage Road

T. 14 S., R. 34 E.,
Section 34: SW¼SE¼, Boise Meridian, Oneida County Idaho

3. Big Canyon Timber Salvage Road

T. 11 S., R. 32 E.,
Section 21: NW¼NE¼, Boise Meridian, Power County Idaho

4. Sand Hollow Timber Salvage Road

T. 10 S., R. 32 E.,
Section 28: SW¼NE¼, Boise Meridian, Power County Idaho

DATES: January 1, 1994. These restrictions will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Ron Kay, Area Manager, Deep Creek Resource Area, Bureau of Land Management—138 S. Main, Malad City, Idaho, 208–766–4766.

SUPPLEMENTARY INFORMATION: In accordance with Title 43, CFR 8340 and in conformance with principles established by the National Environmental Policy Act of 1969, the logging roads mentioned above are gated and closed to all motorized vehicle traffic. Careful review and analysis in cooperation with the Idaho Fish and Game Department, country governments, and the public has determined that unrestricted use of these roads by motorized vehicle traffic will significantly reduce habitat effectiveness for upland and big game in already heavily roaded areas. All road closure(s) contained herein serve to mitigate impacts resulting from salvage timber sales. Copies of maps indicating these road closures are posted at the Deep Creek and Pocatello Resource Area Offices of the Idaho Bureau of Land Management. These closures are not restricted to authorized Bureau of Land Management personnel and permitees or Idaho Fish and Game Department personnel. This closure applies to approximately 15 miles of logging road constructed on four separate timber salvage sales.

Dated: January 6, 1994.

Marvin R. Baglev,

Associate District Manager.

[FR Doc. 94–1114 Filed 1–14–94; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

General Leasing Policies in the Central and Western Gulf of Mexico Planning Areas Under the Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program for 1992–1997

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period.

SUMMARY: On December 7, 1993 (58 FR 64409), MMS published a Call for Public Comment on general policies for leasing natural gas and oil resources in the Central and Western Gulf of Mexico planning areas. Comments were to be received by February 7, 1994. Through this notice, MMS extends the end of the comment period by 30 days, to March 9, 1994.

DATES: Responses will be accepted through March 9, 1994.

ADDRESSES: Responses should be mailed to the Program Director, Office of Program Development and Coordination, Minerals Management Service (MS–4430), 381 Elden Street, Herndon, VA 22070. Hand deliveries may be made at 381 Elden Street, Room 1324, Herndon, Virginia (dial 1215 at lobby telephone). Envelopes or packages should be marked "Comments on Alternative Leasing Policies for the Gulf of Mexico." If any privileged or proprietary information is submitted that the respondent wishes to be treated as confidential, both the envelope and the contents should be marked "Confidential Information."

FOR FURTHER INFORMATION CONTACT: For information pertaining to this Call for Public Comment, telephone Paul Stang or Kim Coffman, Program Development and Planning Branch, at (703) 787–1215, or Dan Henry, Leasing Coordination Branch, at (703) 787–1192.

SUPPLEMENTARY INFORMATION: The basic leasing policies for the Central and Western Gulf of Mexico Planning Areas were established a little more than a decade ago. Since that time, many of the conditions facing the OCS program have changed, and MMS and the Department of the Interior are re-evaluating leasing policies for the Central and Western Gulf of Mexico sales remaining under the Comprehensive OCS Natural Gas and Oil Resource Management Program for 1992–1997. Comments will be considered for sales to be held subsequent to Sale 147, which is planned for Spring 1994, and will be factored into studies to determine the effectiveness of the existing system of leasing and what alternatives are most appropriate. Neither MMS nor the Department of the Interior has preferred alternatives, and no decisions have been made to change the existing leasing system.

Several parties have requested that the comment period be extended by 60 days. Upon consideration of these requests, MMS has decided that an extension of 30 days, to a total of 92 days, is appropriate. This Call for Public Comment is only part of a continuing opportunity for correspondence and dialog between MMS and interested parties, and it should be noted that the decision process for individual sales explicitly includes consideration of comments from outside parties.

Dated: January 10, 1994.

Tom Fry,

Director, Minerals Management Service.

[FR Doc. 94–1065 Filed 1–14–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 8, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments

should be submitted by February 2, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ILLINOIS

Calhoun County

Kamp Store, Jct. of Oak and Broadway, NE Corner, Kampville, 94000027

Du Page County

Peabody, Francis Stuyvesant, Estate, 1717 W. 31st St., Oak Brook, 93000836

Jersey County

Grafton Bank (Grafton MPS), 225 E. Main St., Grafton, 94000016

Grafton Historic District (Grafton MPS), 105–225 and 24–214 W. Main St., and stone warf at Maple St., Grafton, 94000020

Mason, Paris, Building (Grafton MPS), 100 N. Springfield St., Grafton, 94000017

McClintlock, John and Amelia, House (Grafton MPS), 321 E. Main St., Grafton, 94000019

Ruebel Hotel (Grafton MPS), 207–215 E. Main St., Grafton, 94000015

Slaten-LaMarsh House (Grafton MPS), 25 E. Main St., Grafton, 94000018

Johnson County

University of Illinois Experimental Dairy Farm Historic District (Round Barns of Illinois MPS), 1201 W. St. Mary's Rd., Urbana, 94000030

Macon County

Wabash Railroad Station and Railway Express Agency, 780 E. Cerro Gordo St., Decatur, 94000029

Mason County

Havana Public Library (Illinois Carnegie Libraries MPS), 201 W. Adams St., Havana, 94000014

Peoria County

Peace and Harvest, Jefferson and Hamilton Sts., Peoria, 87002527

Rock Island County

LeClaire Hotel, Jct. of 19th St. and 5th Ave., Moline, 94000025

Wabash County

Beall-Orr House, 503 Cherry St., Mt. Carmel, 94000028

White County

Haas, L., Store, 219 E. Main St., Carmi, 94000026

Will County

Eagle Hotel, 100–104 Water St.,Wilmington, 94000021

NEW JERSEY

Hudson County

Stevens, Edwin A., Hall, Fifth St. between Hudson and River Sts., Hoboken, 94000009

Salem County

Smith, William, House, Jct. of NJ 45 and Bassett Rd., Mannington Township, Salem vacinity, 94000008

Somerset County

Bedens Brook Bridge, (Early Stone Arch Bridges of Somerset County MPS), Opossum Rd., .1 mi. S of Orchard Rd., over Bedens's Brook, Montgomery Township, Rocky Hill vicinity, 94000010

Bedens Brook Road Bridge, (Early Stone Arch Bridges of Somerset County MPS), Beden's Brook Rd., .1 mi. E of Province Line Rd., over branch of Beden's Brook, Montgomery Township, Stoutsburg vicinity, 94000011

Rock Brook Bridge, (Early Stone Arch Bridges of Somerset County MPS), Jct. of Long Hill and Dutchtown—Zion Rds. over Cat Tail Brook, Montgomery and Hillsborough Townships, Zion vicinity, 94000012

Warren County

Pleasant Valley Historic District, Area surrounding Mill Pond Rd., Washington Township, Pleasant Valley, 94000013

NEW YORK

Monroe County

Hipp-Kennedy House, 1931 Five Mile Run Rd., Penfield vicinity, 94000003

Wallace, Timothy, House, 2169 S. Clinton Ave., Rochester vicinity, 94000004

NORTH CAROLINA

Alamance County

McCauley-Watson House, NC 1754 (Blanchard Rd.) SW side, 1.5 mi. NW of jct. with NC 62, Union Ridge vicinity, 94000022

Halifax County

Kehukee Primative Baptist Church, NC 1810 NE side, just E of jct. with NC 125, Scotland Neck vicinity, 94000023

Polk County

Johnson, John Hiram, House, Address Restricted, Saluda vicinity, 94000005

PENNSYLVANIA

Chester County

Gregg, Joseph, House, 500 Chandler Mill Rd., Kennett Township, Kennett Square vicinity, 94000007

Fayette County

Douglas, John S., House, 136 N. Gallatin Ave., Uniontown, 94000006

SOUTH CAROLINA

Charleston County

Sunnyside Plantation Foreman's House (Boundary Increase), (Edisto Island MRA). N of jct. of Peters Point and Creekwood Rd., Edisto Island, 94000024.

[FR Doc. 94–1145 Filed 1–14–94; 8:45 am]

BILLING CODE 4310–70–M

Interstate Commerce Commission

[Finance Docket No. 32421]

RailAmerica, Inc.—Control Exemption—South Central Tennessee Railroad Co.

RailAmerica, Inc. (RailAmerica) has filed a notice of exemption to acquire control, through stock purchase, of South Central Tennessee Railroad Company (SCTR), a class III rail carrier which operates over approximately 50 miles of rail line in the vicinity 40 miles west of Nashville, TN, extending from Colesburg Yard, TN (at milepost 2.9) where it interchanges with CSX Transportation, to Hohenwald, TN (at milepost 52.1).

RailAmerica, a noncarrier holding company, also controls Huron and Eastern Railway, Inc. (HESR) and Saginaw Valley Railway Company (SGVY).[1] Under the terms of an agreement with Kyle Railways (Kyle), a shortline railroad holding company, RailAmerica will purchase 100 percent of SCTR's stock, and, after consummation, RailAmerica will be in control of three non-connecting class III rail carriers. The proposed control transaction was scheduled for consummation on or after December 31, 1993.

RailAmerica indicates that: (1) The lines operated by SCTR do not connect with any rail lines operated by HESR or SGVY, or its corporate family; (2) the involved transaction is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; 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). The purpose of the transaction is to preserve rail service on a light density rail line. RailAmerica anticipates that it will be able to attract more rail service to the line than is presently being provided by offering lower costs, more frequent service, and an increased car supply.

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

[1] The Commission exempted the common control of HESR and SGVY in *John H. Marino, Eric D. Gerst, and Mariner Corporation—Control Exemption—Saginaw Valley Railway Company, Inc.*, Finance Docket No. 31196, (ICC served April 23, 1991). See also, *RailAmerica, Inc.—Corp. Family Trans. Ex.—Huron and Eastern Ry. and Saginaw Valley Ry.*, Finance Docket No. 32068 (ICC served June 18, 1992).

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 stay the transaction. Pleadings must be filed with the Commission and served on: Eric D. Gerst, General Counsel, 21 South Fifth Street, Suite 528, Philadelphia, PA 19106.

Decided: January 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1106 Filed 1–14–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Action Under the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on January 6, 1994, the United States Department of Justice, by the authority of the Attorney General and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency, lodged a Consent Decree in *United States* v. *GK Technologies, Inc., et al.*, with the United States District Court for the Southern District of Indiana. The Consent Decree addresses the liability of GK Technologies, Inc. ("GK") and Indiana Steel and Wire Co. ("IS&W Co."), as well as stipulations regarding Indiana Steel and Wire Corporation ("IS&W Corp.") (collectively, "the Defendants"), in an action brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a) and (g), for alleged violations of RCRA and hazardous waste management regulations at an industrial facility in Muncie, Indiana (the "IS&W Facility"). The Consent Decree requires the Defendants to pay $425,000 as a civil penalty (or to pay $225,000 and perform a Supplemental Environmental Project, involving elimination of source ammonia emissions); to comply with all closure, financial responsibility and groundwater monitoring requirements under Indiana's RCRA regulations for the Mocks Pond surface impoundment at the IS&W Facility; and to perform comprehensive corrective action under RCRA at the IS&W Facility.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *GK Technologies, Inc.*, DOJ Reference No. 90–7–1–407A.

The Consent Decree may be examined at the Region V Office of Regional Counsel, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; at the Office of the United States Attorney for the Southern District of Indiana, Civil Division, U.S. Courthouse, 5th floor, 46 East Ohio Street, Indianapolis, Indiana 46204; or at the Consent Decree Library, United States Department of Justice, 1120 G Street, NW., 4th floor, Washington, DC 20005 (202–624–0892). A copy of the Consent Decree, including Attachments A and B thereto, may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check for $25.00 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–1040 Filed 1–14–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 30, 1993, a proposed consent decree in *United States* v. *Maryland Sand, Gravel and Stone, et al.*, Civ. A. No. HAR–89–2869, was lodged with the United States District Court for the District of Maryland.

The complaint filed by the United States in October 1989 seeks to recover past, unreimbursed costs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, incurred by the United States in connection with response actions taken at the Maryland Sand, Gravel and Stone Superfund Site ("Site") located in Elkton, Maryland. Maryland Sand, Gravel and Stone Company, ("Maryland Sand Company") the owner and operator of the Site, was sued along with four other defendants. The proposed decree represents a partial settlement of this case, resolving only the United States' claims for past response costs against the Maryland Sand Company.

Under this consent decree, the Maryland Sand Company will pay the United States $25,000 in partial reimbursement of the United States' unrecovered past response costs. The settlement is based on a demonstration by Maryland Sand Company of its inability to reimburse the United States for any additional response costs. Under the terms of the decree, Maryland Sand Company will also provide the United States and its representatives, including the United States Environmental Protection Agency, access to the Site for purposes of conducting and overseeing CERCLA response activities. The United States has specifically reserved its right to seek further relief from Maryland Sand Company on claims for future response costs, and for claims for natural resource damages, criminal liability and other claims that are outside of the scope of the complaint filed in this case.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Maryland Sand, Gravel and Stone, et al.*, DOJ Reference No. 90–11–2–225(A).

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Maryland, U.S. Courthouse, 101 Lombard Street, Baltimore, MD 21201; Regional III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA.; and at the Consent Decree Library, 1120 "G" Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–1037 Filed 1–14–94; 8:45 am]

BILLING CODE 4410–01–M

[2] Although RailAmerica states that no employees will be adversely affected by the transaction, it recognizes that the Commission may not relieve a carrier of labor protection obligations for section 11343 transactions. 49 U.S.C. 11347.

Antitrust Division

United States v. Baroid Corp., Baroid Drilling Fluids, Inc., DB Stratabit (USA) Inc., and Dresser Industries, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Baroid Corporation; Baroid Drilling Fluids, Inc.; DB Stratabit (USA) Inc.; and Dresser Industries Inc.*

The Complaint of the United States in this case alleges that the merger of Dresser Industries, Inc. ("Dresser") and Baroid Corporation ("Baroid") may substantially lessen competition in the United States in the manufacture and sale of drilling fluids and in the manufacture and sale of diamond drill bits in violation of section 7 of the Clayton Act. Both products are used to drill oil and gas wells. Drilling fluids, a mixture of natural and synthetic chemical compounds, are used at petrocarbon drilling sites to improve the function of the drill bit and other drilling tools in the well, including cooling and lubricating the drill bit and controlling downhole pressures. Diamond drill bits cut through rock and other formations during drilling operations.

Dresser, through its 64% partnership interest in M–I Drilling Fluids Co., and Baroid, through its wholly-owned subsidiary, Baroid Drilling Fluids, Inc., are two of the three major U.S. producers of drilling fluids. In addition, Dresser's Security Division and Baroid's wholly-owned subsidiary, DB Stratabit (USA) Inc., manufacture diamond drill bits for sale in the United States. They are two of the five major competitors in the U.S. diamond drill bit market.

The proposed Final Judgment requires defendants to divest all of their direct and indirect ownership and control of either Dresser's or Baroid's drilling fluid business by June 1, 1994. In addition, Defendants must, by July 1, 1994, divest Baroid's diamond bit business, which includes a manufacturing facility, certain equipment, a nonexclusive license of patents and other intellectual property to manufacture and sell steel-bodied diamond drill bits worldwide, except in the People's Republic of China, and a nonexclusive license to manufacture and sell matrix diamond bits in the United States. If defendants do not complete the respective divestitures by the allotted time, a trustee or trustees will be appointed to conduct either or both of the divestitures.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, room 9104, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001 (202–307–6351).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stipulation

Judge Sporkin

In the matter of United States of America, Plaintiff; v. Baroid Corp., Baroid Drilling Fluids, Inc., DB Stratabit (USA) Inc., and Dresser Industries, Inc., Defendants. [Civil Action No. 93–2621; Filed: December 23, 1993.]

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. The parties shall abide by and comply with the provisions of the Final Judgment pending its entry, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court;

4. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 23, 1993.

For Plaintiff United States of America:

Anne K. Bingaman,

Assistant Attorney General.

Constance K. Robinson,

Deputy Director of Operations.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, U.S. Department of Justice, Antitrust Division

Angela L. Hughes,

Denise L. Diaz,

Theodore R. Bolema,

Attorneys, U.S. Department of Justice, Antitrust Division, room 9104, 555 4th Street, NW., Washington, DC 20001, 202/307–6410.

For Defendant Dresser Industries, Inc.:

Akin, Gump, Strauss, Hauer, & Feld, L.L.P.

Paul B. Hewitt,

A Member of the Firm.

1333 New Hampshire Avenue, NW., Suite 100, Washington, DC 20036, (202) 887–4000.

For Defendants Baroid Corporation, D8 Stratabit (USA) Inc., and Baroid Drilling Fluids, Inc.: Kirkland & Ellis.

Tefft W. Smith,

A Member of the Firm.

200 E. Randolph Dr., Chicago, Illinois 60601, (312) 861–2000.

Stipulation Approved for Filing.

Done this _____ day of _____, 199___.

United States District Judge.

Final Judgment

[Civil Action No. 93–2621; Filed: December 23, 1993]

Judge Sporkin

In the matter of United States of America, Plaintiff; v. Baroid Corp., Baroid Drilling Fluids, Inc., DB Stratabit (USA) Inc., and Dresser Industries, Inc., Defendants.

Whereas, plaintiff, United States of America, having filed its Complaint herein on December 23, 1993, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of act or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

Jurisdiction

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Baroid" means defendant Baroid Corporation; each division, subsidiary, or affiliate thereof, excluding Dresser, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Baroid Drilling" means defendant Baroid Drilling Fluids, Inc., which is a wholly owned subsidiary of Baroid; each division, subsidiary, or affiliate thereof, excluding Dresser, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "DBS" means defendant DB Stratabit (USA) Inc., which is a wholly owned subsidiary of Baroid; each division, subsidiary, or affiliate thereof, excluding Dresser, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

D. "Dresser" means defendant Dresser Industries, Inc.; each division, subsidiary, or affiliate thereof, excluding Baroid, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

E. "Baroid's Diamond Bit Business" means all assets owned or controlled by Baroid, including all assets owned or controlled by DBS, that are or have been used in the United States to research, develop, test, manufacture, service, or market its diamond drill bits. Baroid's diamond bit business includes all real property, material, equipment, supplies, customer lists, contracts and accounts relating to the manufacture and sale of diamond drill bits in the United States. Baroid's diamond bit business includes a nonexclusive license to manufacture and sell matrix diamond bits in the United States and a nonexclusive license to manufacture and sell steel-bodied diamond bits anywhere in the world, except The People's Republic of China, using all intellectual property, including all patents, copyrights, copyright registrations and applications, trademarks, trademark registrations and applications, trade names or commercial names, know-how, computer software programs, and all other tangible and intangible assets, rights, and other benefits, presently owned, licensed, possessed, or used by Baroid in the research, development, testing, manufacture, servicing, or marketing of matrix or steel-bodied diamond bits. Research and development of diamond drill bits includes, but is not limited to, engineering support relating to the analysis and testing of a diamond drill bit's design, application, and components in order to enhance the bit's performance or to create a new diamond bit. The nonexclusive licenses granted herein need not be transferable (either by assignment or sublicense), except in connection with the sale of all or substantially all of Baroid's diamond bit business. Baroid's diamond bit business also includes all data from research and development projects relating to matrix and/or steel-bodied drill bits undertaken by Baroid at any time up to and including the date of the divestiture required by section V of this Final Judgment, including the research and development projects currently being conducted by Baroid that relate to new Thermally Stable Polycrystalline diamond bits, new impregnated bits, anti-balling features, air drilling, Polycrystalline Diamond Compact Bit research, surface set bit, LX bits, and BiCenter bits. Baroid's diamond bit business does not include data from the bit dynamics research project Baroid is conducting in conjunction with Royal Dutch Shell. Baroid's diamond bit business also includes equipment owned or controlled by Baroid that has been used in the United States to research, develop, and test Baroid's diamond drill bits and materials for those bits. This equipment includes, but is not limited to, each of the following items or the functional equivalent thereof: CAD/CAM System Software; Stereoscope; Optical Microscope; Light Microscope; DEC Station 3100; Stereo Microscope; Rockwell Hardness Testing equipment; and Surface Grinder. In addition, included in Baroid's diamond bit business is the right for two years to have access to, at defendants' variable cost, the following equipment located in Belgium: Coordinate Measurement Machine; Finite Elements Package; Atmospheric Drilling Machine; Single Cutter Tester; Flow Visualization Loop with High Speed Carriers; Lab Furnace under Controlled Atmosphere; and High Speed Data Acquisition System. The defendants shall pay the cost of shipping up to three diamond drill bits per calendar quarter to Belgium. Also included in Baroid's diamond bit business is a hard copy and copy of all computer tapes or discs containing any data in the possession of Baroid at any time up to and including the date of the divestiture required by section V of this Final Judgment, such as bit records or off-set well information, which record the performance anywhere in the world of any matrix or steel-bodied diamond bits manufactured or sold by Baroid or any other producer of diamond drill bits.

Baroid's diamond bit business includes its diamond drill bit manufacturing facilities in Houston, Texas, and all equipment, supplies, data, documents and inventories (other than Baroid's inventory of diamonds and diamond drill bits held for sale) contained therein, as well as equipment owned or controlled by Baroid on September 7, 1993 that has been used in the United States by Baroid to manufacture matrix diamond bits. The equipment in the Houston facility includes, but is not limited to, the following: LS Bonding Units, Kuraki CNC Mills, Okuma CNC Lathe, Yuasa Lathe, Axelson Lathe, Timemaster Lathe, and Bryant Grinder. The equipment formerly used by Baroid to manufacture matrix diamond bits includes, but is not limited to, the following: Norton Lathe, 18" Kohema Lathe, 20" Kohema Lathe, Yuasa Lathe, Allain Mill, Bridgeport Mill, Vanier Mill, Cincinnati Mill with 90 degree Volstrohead, Blast-It-All Sandblaster, Kelco Sandlblaster, Positioner (welding), Southbend Oven, Lochhead Haggerty Furnace and Control Panel, Sunbean Furnace and Control Panel, Powermatic Band Saw, Two 360 degree Layout Chucks, Two Surface Tables, Matrix Powder Mixer, Micrometers, Height Gauges, Scales, and various measuring equipment and welding equipment. Baroid's diamond bit business shall not include any rights, including trademarks and service marks, associated with the use of the trade names or commercial names of Stratabit, DB Stratabit Inc., DBS, Diamond Boart, or any derivative thereof; provided, however, that in the marketing of its diamond drill bits the purchaser of Baroid's diamond bit business will possess the right for two years following the date of divestiture to identify its diamond drill bits as being manufactured pursuant to a license from DBS.

F. "Diamond drill bits" means natural diamond drill bits and polycrystalline diamond compact drill bits. Diamond drill bits do not include coring bits.

G. "Drilling fluid" means a mixture of natural and synthetic chemical compounds used at petrocarbon drilling sites to cool and lubricate the drill bit, clean the hole bottom, carry cuttings to the surface, seal porous well formations, control downhole pressures, and improve the function of the drilling string and tools in the hole.

H. "Drilling fluid business" means either one of the following: (1) Dresser's interest in M–I Drilling Fluids Co.; or (2) all assets of Baroid Drilling and any other assets that Baroid owns or has an interest in that are used to research, develop, test, produce, manufacture, service, or market, domestically or internationally, drilling fluids, including, but not limited to, all barite, bentonite, and other mineral mines; chemical plants; mineral grinding and processing plants; other real property; material; equipment; supplies; customer lists; contracts and accounts; patents; copyrights; copyright registrations and applications; trademarks; trademark registrations and applications; trade names or commercial names; know-how; computer software programs; and all other tangible and intangible assets, rights, and other benefits, presently owned, licensed, possessed, or used by Baroid in the research, development, testing, production, manufacture, servicing or marketing of drilling fluids.

I. "Matrix diamond bits" means diamond drill bits comprised of a body made of a tungsten carbide matrix and cutters brazed onto the bit body or cast into or around the cutting element of the matrix material.

J. "Steel-bodied diamond bits" means diamond drill bits comprised of a body made of steel and cutters attached to the bit body by an interference fit or a braze process.

K. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III

Applicability

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, or of the assets required to be divested herein, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV

Divestiture of Drilling Fluid Business

A. Defendants are hereby ordered and directed to divest all of their direct and indirect ownership and control of the drilling fluid business to a purchaser prior to June 1, 1994.

B. If defendants have not accomplished the required divestiture prior to June 1, 1994, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed one month.

C. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. In carrying out their obligation to divest the drilling fluid business, defendants may divest these operations alone, or may divest along with these operations any other assets of Baroid or Dresser.

D. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known in the United States and in other major countries, by usual and customary means, the availability of the drilling fluid business, for sale as an ongoing business. The defendants shall notify any person making an inquiry regarding the possible purchase of this operation that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of the drilling fluid business, subject to customary confidentiality assurances, all pertinent information regarding the drilling fluid business, except information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the drilling fluid business to have access to personnel at the drilling fluid business and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the drilling fluid business. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to the drilling fluid business, except to the extent included in the drilling fluid business.

E. Divestiture required by section IV of the Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the drilling fluid business can and will be operated by the purchaser as a viable, ongoing business engaged in the manufacture and sale of drilling fluids in the United States. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of drilling fluids in the United States, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of drilling fluids in the United States.

F. The defendants shall not sell the drilling fluid business to Baker Hughes, Inc., Schlumberger Ltd., or Anchor Drilling Fluids, or any of their affiliates of subsidiaries during the life of this decree. The purchaser of the divested drilling fluid business shall not sell the drilling fluid business to, or combine that business with the drilling fluid operations of, Dresser Industries, Inc., Baker Hughes, Inc., Schlumberger Ltd., or Anchor Drilling Fluids, or any of their affiliates or subsidiaries during the life of this decree.

G. Except to the extent otherwise approved by plaintiff, any assets of the drilling fluid business divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and liens to Baroid or Dresser.

V

Divestiture of Baroid's Diamond Bit Business

A. Defendants are hereby ordered and directed to divest to a purchaser prior to July 1, 1994 all of their direct and indirect ownership and control of Baroid's diamond bit business. The obligation to divest shall be satisfied if, by July 1, 1994, defendants enter into a binding contract for sale of Baroid's diamond bit business to a purchaser according to terms approved by plaintiff that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date no later than September 1, 1994, and if sale is completed pursuant to the contract.

B. If defendants have not accomplished the required divestiture prior to July 1, 1994, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed three months, if defendants request such an extension and demonstrate to plaintiff's satisfaction that they are then engaged in negotiations with a prospective purchaser that are likely to result in the required divestiture but that the divestiture cannot be completed prior to July 1, 1994.

C. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. In carrying out their obligation to divest Baroid's diamond bit business, defendants may divest these operations alone, or may divest along with these operations any other assets of Baroid or Dresser.

D. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known in the United States and in other major countries, by usual and customary means, the availability of Baroid's diamond bit business, for sale as an ongoing business. The defendants shall notify any person making an inquiry regarding the possible purchase of this operation that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of Baroid's diamond bit business, subject to customary confidentiality assurances, all pertinent information regarding Baroid's diamond bit business, except information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of Baroid's diamond bit business to have access to personnel at Baroid's diamond bit business and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of Baroid's diamond bit business. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to Dresser's diamond bit business, except to the extent included in Baroid's diamond bit business.

E. Divestiture required by section V of the Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that Baroid's diamond bit business can and will be operated by the purchaser as a viable, ongoing business engaged in the manufacture and sale of diamond drill bits in the United States. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of diamond drill bits in the United States, including the ability to conduct research, development, and testing of diamond bits, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of diamond drill bits in the United States.

F. The defendants shall not sell Baroid's diamond bit business to Baker Hughes, Inc., Camco International, Inc., Smith International, Inc., or any of their affiliates or subsidiaries during the life of this decree. The purchaser of Baroid's diamond bit business shall not sell that business to, or combine that business with the diamond drill bit operations of, Dresser Industries, Inc., Baker Hughes, Inc., Camco, Inc., Smith International, Inc., or any of their affiliates or subsidiaries during the life of this decree.

G. Except to the extent otherwise approved by plaintiff, Baroid's diamond bit business divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and liens to Baroid or Dresser.

VI

Appointment of Trustee For the Drilling Fluid Business

A. If defendants have not accomplished the divestiture required by section IV of the Final Judgment by April 29, 1994, defendants shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section IV(B), whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestiture required by section IV of this Final Judgment at the expiration of the time period specified in section IV(A) and IV(B) of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the drilling fluid business.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the drilling fluid business. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VIII of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the drilling fluids business by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with section VIII of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, no incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of the drilling fluid business and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all

remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the drilling fluid business and shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of the drilling fluid business, and defendants shall develop such financial or other information relevant to the drilling fluid business.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the drilling fluid business as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the drilling fluid business, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by section VI of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VII

Appointment of Trustee for Baroid's Diamond Bit Business

A. If defendants have not accomplished the divestiture required by section V of the Final Judgment by May 30, 1994, defendants shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to section V(B), whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestiture required by section V of this Final Judgment at the expiration of the time period specified in section V(A) and V(B) of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of Baroid's diamond bit business; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to section VIII of this Final Judgment of a proposed divestiture of Baroid's diamond bit business and plaintiff has not filed a written notice that it objects to said proposed divestiture. When the appointment of the trustee becomes effective, Baroid's diamond bit business will include a nonexclusive license to manufacture and sell steel-bodied bits anywhere in the world, including The People's Republic of China.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell Baroid's diamond bit business. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VIII of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of Baroid's diamond bit business by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with section VIII of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of Baroid's diamond bit business and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture and shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of Baroid's diamond bit business, and defendants shall develop such financial or other information relevant to Baroid's diamond bit business.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of Baroid's diamond bit business as contemplated under this Final Judgment; provided,

however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in Baroid's diamond bit business, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section VII of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why any required divestiture have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VIII

Notification

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestiture pursuant to sections IV, V, VI, or VII of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the provisions in sections VI(C) and VII(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under section V shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in sections VI(C) and VII(C), a divestiture proposed under section VI or VII shall not be consummated unless approved by the Court.

IX

Affidavits

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestiture passes to the trustee pursuant to section VI or section VII of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with sections IV and V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in Baroid's diamond bit business or the drilling fluid business, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

X

Financing

With prior consent of the plaintiff, defendants may finance all or any part of any purchase made pursuant to sections IV, V, VI, or VII of this Final Judgment.

XI

Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. The defendants shall take all steps necessary to assure that DBS and Baroid Drilling will be maintained as separate and independent, economically viable, ongoing businesses with their assets (including proprietary technology, management, operations, and books and records) separate, distinct and apart from those of Dresser. The defendants shall use all reasonable efforts on behalf of DBS to maintain and increase sales of diamond drill bits, continue its current plans for research, development, and testing of diamond drill bits, and otherwise maintain the business as a viable and active competitor in the United States. The defendants shall use all reasonable efforts on behalf of Baroid Drilling and M–I Drilling Fluids Co. to maintain and increase sales of drilling fluids, continue current plans for research, development, and testing of drilling fluids, and otherwise maintain the businesses as viable and active competitors in the United States.

B. The defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements of substitutes therefore), assets required to be divested pursuant to sections IV, V, VI, or VII except that any component of such assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide capital and provide and maintain sufficient working capital to maintain DBS, including Baroid's diamond bit business; Baroid Drilling; and M–I Drilling Fluids Co. as viable, ongoing businesses consistent with the requirements of section XI(A).

D. The defendants shall preserve the assets required to be divested pursuant to section IV, V, VI, and VII, except those replaced with newly acquired assets in the ordinary course of business, in a state or repair equal to

their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of DBS and Baroid's diamond bit business until the date of divestiture of Baroid's diamond bit business, and shall preserve the documents, books and records of Baroid Drilling and M–I Drilling Fluids Co. until the date of divestiture of the drilling fluids business.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of section XII, the defendants shall refrain from terminating or altering one or more current employment, salary, or benefit agreements for one or more executive, managerial, sales, marketing, engineering, or other technical personnel of DBS, Baroid Drilling or M–I Drilling Fluids Co., and shall refrain from transferring any employee so employed without the prior approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of Baroid's diamond bit business or the drilling fluid business.

XII

Employment Offers

A. Defendants are hereby enjoined and restrained until one year following the date of divestiture from employment of, or making offers of employment to, any person, who currently is an executive, managerial, sales, marketing, engineering, research and development, or other technical employee of Baroid in the United States, the preponderance of whose duties relate to Baroid's diamond bit business ("Baroid diamond bit employees".) This provision, however, does not apply to any employee who is terminated or not hired by the purchaser of Baroid's diamond bit business. Defendants shall encourage and facilitate employment of such employees by the purchaser, and shall remove any impediments that exist which may deter such employees from accepting employment with the purchaser of Baroid's diamond bit business, including, but not limited to, the payment of all bonuses to which such employees would otherwise have been entitled had they remained in the employment of Baroid until the end of fiscal year 1994.

B. The purchaser of Baroid's diamond bit business shall also have the right to hire any person who is currently a sales, marketing or research and development employee of Baroid, the preponderance of whose duties do not relate to Baroid's diamond bit business. Such offers of employment and acceptances thereof, contingent upon the consummation of the purchase of Baroid's diamond bit business, may be made prior to the consummation of the divestiture. Defendants shall provide any prospective purchaser with cooperation and assistance in its efforts to determine which, if any, such Baroid employees it seeks to hire. Such cooperation and assistance shall include making available for consultation purposes to any prospective purchasers of Baroid's diamond bit business all Baroid diamond bit employees, and providing information sufficient to enable a prospective purchaser to assess the relative performance of all Baroid sales, marketing and research and development employees. The defendants may, prior to the time the appointment of the trustee becomes effective pursuant to section VII, take any lawful steps they deem appropriate to retain the services of any Baroid employees the preponderance of whose duties do not relate to Baroid's diamond bit business.

XIII

Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XIII shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIV

Retention of Jurisdiction

Jurisidction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XV

Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XVI

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Order

[Civil Action No. 93–2621 (Stanley Sporkin); Filed December 23, 1993]

In the matter of United States of America, Plaintiff, v. Baroid Corp. *et al.*, Defendants.

With the approval of the parties, it is hereby: *Ordered*, That the proposed Final Judgment in this case, as referenced in the Stipulation signed on the 23rd day of December, 1993 is hereby modified as follows:

Any mention in such proposed Final Judgment that the Court *shall appoint* an individual to a particular position is hereby understood to mean that the Court shall appoint said individual only if the Court deems said individual to be suitable for the position.

In the event that the Court does not find said individual to be suitable for the position, a new nominee shall be presented to the Court, as set forth in the procedures found in the proposed Final Judgment, for the Court's approval and said procedure shall be followed until the Court finds an individual acceptable to the Court.

Date: December 23, 1993.

Stanley Sporkin,

United States District Court.

Competitive Impact Statement

[Civil Action No. 93–2621 (Stanley Sporkin); Filed: December 23, 1993]

Judge Sporkin

In the matter of United States of America, Plaintiff; v. Baroid Corp., Baroid Drilling Fluids, Inc., DB Stratabit (USA) Inc., and Dresser Industries Inc., Defendants.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Baroid Corporation, Baroid Drilling Fluids, Inc., DB Stratabit (USA) Inc., and Dresser Industries, Inc. in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On December 23, 1993, the United States filed a Complaint alleging that the proposed merger of Dresser Industries, Inc. ("Dresser") and Baroid Corporation ("Baroid") would violate Section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition in the manufacture and sale in the United States of drilling fluids, which Dresser, through its 64 percent partnership interest in M–I Drilling Fluids, Co. ("M–I"), and Baroid, through its wholly owned subsidiary, Baroid Drilling Fluids, Inc. ("Baroid Drilling"), produce and sell. The Complaint also alleges that the effect of the merger may be substantially to lessen competition in the manufacture and sale in the United States of diamond drill bits, which both Dresser's Security Division ("Security") and Baroid's wholly owned subsidiary DB Stratabit (USA) Inc. ("DBS") manufacture and sell. Both drilling fluids and diamond drill bits are used by energy exploration and development companies to drill oil and gas wells. The Complaint seeks, among other relief, a permanent injunction preventing defendants from, in any manner, combining their drilling fluid and diamond drill bit businesses.

On December 23, 1993, the United States and defendants filed a stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, defendants would be required to sell, by June 1, 1994, either Baroid Drilling or Dresser's interest in M–I. By July 1, 1994, defendants would also have to divest Baroid's domestic diamond drill bit business, including a manufacturing plant in Houston, Texas, as well as licenses for DBS patents and technology to make and sell DBS diamond drill bits domestically and to a significant extent throughout the world. If defendants should fail to complete either or both of the divestitures, a trustee appointed by the Court would be empowered to complete them.

The United States, Dresser, and Baroid have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

On September 7, 1993, Dresser and Baroid entered into a purchase agreement under which the two companies would merge and Baroid would become a wholly-owned subsidiary of Dresser. This acquisition would, if unchallenged, effectively merge all of the businesses of Dresser and Baroid, including their drilling fluid and diamond drill bit businesses. The purchase price is approximately $900 million.

Dresser and Baroid are both large, diversified oil field service companies that provide a wide variety of products and services necessary to explore for and develop oil and gas reserves. Dresser reported total 1992 sales of about $3.8 billion; Baroid's total 1992 sales were approximately $614.4 million.

The Complaint alleges that there are two markets in which Dresser and Baroid are significant competitors. Those two markets are the manufacture and sale in the United States of drilling fluids and the manufacture and sale in the United States of diamond drill bits.

Both products are used by drilling operators to drill for oil and gas. Wells are drilled using a drill pipe (or "drill string"), which is a heavy-walled pipe assembled end-to-end from thirty- to forty-foot sections. The drill string is suspended from the mast of a drilling rig and lowered gradually as the earth is penetrated. As the drill string is rotated, the earth is cut by a drill bit,[1] which is attached to the end of the drill string or to a motor that is attached to the end of the drill string. Drilling fluid is pumped under pressure through the drill string to the drill bit at the end of the string. Drilling fluid, a mixture of natural and synthetic chemical compounds (principally barite and bentonite), improves the performance and durability of the drill string and the tools in the hole by, for example, cooling and lubricating the drill bit and controlling downhole pressure.

Both drilling fluids and diamond drill bits are critical products for oil and gas exploration and development. The use of an incorrectly formulated drilling fluid can result in a costly, dangerous hole blow-out or the immobilization of the drill string. The percentage of total drilling costs accounted for by drilling fluids can be as high as 10 percent. The percentage of total drilling costs accounted for by drill bits is less, usually no more than 5 percent, but the cost of a bit failure can be very high. Valuable drilling time is lost because the entire drill string must be pulled out of the hole, disassembled, a new bit attached, and the drill string reassembled and run back into the hole.

M–I is a vertically integrated company with mining operations, manufacturing

[1] There are two types of drill bits: tricone drill bits and diamond drill bits. Tricone bits consist of three steel cones that rotate as the bit turns. Diamond drill bits have no moving parts but contain cutting elements made of natural or synthetic diamond embedded in the bottom and sides of a steel or matrix body. The kind of drill bits used in a particular drilling operation depends upon the depth of the well, the direction of the drilling, the type of formation through which the drill bit must cut, and the type of drilling fluid used. Diamond drill bits provide higher penetration rates, better durability, and require the drill string to be pulled out of the well hole fewer times than tricone bits. Diamond bits typically cost between three and eight times as much as tricone bits. Where daily drilling costs are high and the geological conditions are suitable, customers prefer to use diamond bits over tricone bits in order to reduce drilling time and, thereby, lower overall costs.

plants, research and engineering facilities, distribution facilities and sales and service centers located throughout the world. M–I's worldwide, net sales of drilling fluids for fiscal year 1992 and $383.6 million. Its domestic sales were approximately $110 million. Baroid Drilling produces and sells drilling fluids through a distribution network consisting of approximately 150 onshore and offshore stockpoints and over 50 field laboratories. In 1992, Baroid Drilling's worldwide, net sales were $331.5 million, and its domestic sales were approximately $100 million.

Dresser's Security Division has a diamond drill bit manufacturing facility in Houston, Texas. Dresser's total 1992 worldwide sales of diamond drill bits were about $10.4 million and its U.S. sales of that product were about $4.7 million. Baroid produces diamond drill bits at manufacturing facilities located in Houston, Texas, Brussels, Belgium, and Leduc, Alberta, Canada. Baroid's 1992 worldwide sales of diamond drill bits were approximately $40 million, and its domestic sales were about $3.6 million. Baroid's domestic diamond drill bit operations are handled through its DBS subsidiary.

The Complaint alleges that the manufacture and sale of drilling fluids is a relevant product market for antitrust purposes. A small, significant nontransitory price increase would not cause customers to use another product instead of drilling fluid. The United States is a relevant geographic market for the drilling fluid market within the meaning of Section 7 of the Clayton Act. The Complaint states that this market is highly concentrated and would become substantially more concentrated as a result of the merger of Baroid and Dresser. Three companies dominate the drilling fluid business in the United States, including M–I and Baroid Drilling. Based on 1992 sales data, M–I was the largest firm in the drilling fluid market, accounting for about 29 percent of sales, while Baroid Drilling, the second largest firm, accounted for about 22 percent. The merger of Dresser and Baroid would increase the Herfindahl-Hirschman Index by about 1200 points to a post-acquisition level of more than 2800 points. The merger of Dresser and Baroid will diminish competition in the drilling fluid market by enabling the remaining competitors more likely, more successfully, and more completely to engage in coordinated interaction that harms customers. The increase in concentration will result in higher prices for drilling fluids, which will increase the costs of oil and gas exploration and development in the United States.

Successful new entry into the United States drilling fluid market is difficult and time-consuming. Moreover, the expansion of fringe firms would be insufficient to counteract or deter a small but significant nontransitory price increase. To gain a significant market share, a firm must have an adequate, reliable, and independent source of barite and bentonite and a significant research and development capability. Because the costs to the customer of product failure are so high, the firm must also have a reputation for providing a reliable product and dependable service. The establishment of such a reputation takes years and requires a significant investment of resources.

The Complaint also alleges that the manufacture and sale of diamond drill bits is a relevant product market for antitrust purposes. A small, significant nontransitory increase in the price of diamond drill bits would not cause customers to use another product. The United States is a relevant geographic market for this product market within the meaning of section 7 of the Clayton Act. The Complaint states that this market is concentrated, with five companies, including Dresser and Baroid, accounting for approximately 90 percent of all diamond drill bit sales in the United States. These five companies have established reputations for providing dependable diamond drill bits for almost all types of drilling operations, backed by extensive product research, development, and testing. For a significant number of drilling projects, only these five companies have the product quality, performance record, and engineering support required to be considered by customers as a supplier of diamond drill bits.

The United States diamond drill bit market would become significantly more concentrated as a result of the merger of Dresser and Baroid. Based on 1992 sales data, Dresser was the third largest firm in the diamond drill bit market, accounting for about 13 percent of sales, while Baroid, the fifth largest firm, accounted for about 10 percent. The merger of Dresser and Baroid would result in a competitor having almost 25 percent of U.S. diamond drill bit sales, and would increase the Herfindahl-Hirschman index by more than 250 points to a post-acquisition level of more than 2300. As a result of the acquisition, four firms would account for approximately 90 percent of sales. The merger of Dresser and Baroid will diminish competition in the United States diamond drill bit market by enabling the remaining competitors more likely, more successfully, and more completely to engage in coordinated interaction that harms customers. This increase in concentration would result in higher prices for diamond drill bits, which will increase the cost of oil and gas exploration and development in the United States.

Entry into the United States market for diamond drill bits is difficult, expensive, and time-consuming. To enter the diamond drill bit market and gain a significant market share, a firm must build a manufacturing and research and development facility, develop diamond bits, and establish a reputation for the efficiency, durability, and reliability of its product under actual drilling conditions in a wide variety of different geographic and geological conditions. Because the performance of a bit is critical to assuring the lowest possible drilling costs, and the risk of financial loss due to bit failure is substantial, customers are generally very reluctant to purchase bits from a new supplier that lacks a proven performance record. It would take several years and significant investment for a new supplier to establish a performance record and obtain the sales that are necessary to support the substantial engineering, technical services, and research and development capabilities possessed by the five major competitors in this market.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed merger of Dresser and Baroid may be substantially to lessen competition, in violation of section 7 of the Clayton Act, in the United States for the manufacture and sale of drilling fluids and the manufacture and sale of diamond bits. The risk to competition posed by this transaction, however, would be substantially eliminated were defendants to divest either Baroid Drilling or Dresser's interest in M–I, and Baroid's diamond bit business, as defined in the proposed Final Judgment, to a purchaser or purchasers that would operate the businesses as active, independent, and financially viable United States competitors in the respective product markets. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale of a drilling fluid business as well as the sale of Baroid's diamond bit business and to prevent the

anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendants to divest the "drilling fluid business" by June 1, 1994, to a purchaser that has the intent and capability to compete promptly and effectively in the manufacture and sale of drilling fluids in the United States. The "drilling fluid business" is defined in the proposed Final Judgment as either Dresser's 64 percent interest in M–I, or all assets of Baroid Drilling and any other assets that Baroid owns or has an interest in that are used to research, develop, test, produce, manufacture, service or market, domestically or internationally, drilling fluids. If the divestiture has not occurred by June 1, 1994, the United States may, in its sole discretion, extent the time period up to one month. The proposed Final Judgment prohibits the sale by the defendants of the drilling fluid business to their major competitors in the drilling fluid market: Baker Hughes, Inc., Schlumberger Ltd., and Anchor Drilling Fluids. This prohibition lasts for the life of the decree. The purchaser of the drilling fluid business is also prohibited from combining that business with the drilling operations of any of those three companies or Dresser.

Section V of the proposed Final Judgment requires defendants to divest "Baroid's diamond bit business" by July 1, 1994, to a purchaser that has the intent and capability to compete promptly and effectively in the manufacture and sale of diamond bits in the United States. "Baroid's diamond bit business" is defined in the proposed Final Judgment as the assets owned or controlled by Baroid that are or have been used in the United States to research, develop, test, manufacture, service or market its diamond drill bits. The assets to be divested include Baroid's diamond bit manufacturing facility in Houston, Texas, all equipment in that plant, and all equipment owned or controlled by Baroid that was used to manufacture matrix diamond bits.[2] Baroid's diamond bit business also includes a nonexclusive license to manufacture and sell matrix diamond bits in the United States and a nonexclusive license to manufacture and sell steel-bodied diamond bits anywhere in the world, except The People's Republic of China, using all patents and other intellectual property owned or controlled by Baroid. These licenses will allow the purchaser to be an effective competitor in the United States diamond drill bit market. The business divested will additionally include research and development equipment in the Houston plant and access for two years to certain pieces of research and development equipment in Baroid's Belgium facility, as well as data from almost all research and development projects relating to matrix or steel-bodied drill bits undertaken by Baroid up to and including the date of the divestiture. Research and development of diamond drill bits includes, but is not limited to, engineering support relating to the analysis and testing of a diamond drill bit's design, application, and components in order to enhance the bit's performance or to create a new diamond bit. In addition, Baroid's diamond bit business includes all data recording diamond bit performance in Baroid's possession at the date of divestiture. The purchaser also has the right for two years to market its diamond bits as being manufactured pursuant to a license from DBS but will not have the right to use the trade names of "Stratabit," "DB Stratabit, Inc.," "Diamont Boart," "DBS," or any derivative thereof. The licenses granted need not be transferable, and thus remain with the original purchaser in perpetuity unless transferred in connection with the sale of all or substantially all of Baroid's diamond bit business.

The divestiture requirement will be satisfied if the defendants have entered a binding contract to sell Baroid's diamond bit business by July 1, 1994, as long as the divestiture will be completed by September 1, 1994. Also, if the defendants have not accomplished the required divestiture by July 1, but demonstrate to the United States' satisfaction that they are then engaged in negotiations with a prospective purchaser that are likely to result in the required divestiture, the United States may extend the time period for divestiture up to three more months. The defendants are prohibited by the proposed Final Judgment from selling Baroid's diamond bit business to their major competitors in the diamond drill bit market: Baker Hughes, Inc., Smith International, Inc., and Camco International, Inc. That prohibition lasts for the life of the decree. The purchaser of Baroid's diamond bit business is also prohibited from combining that business with the diamond drill bit operations of any of those companies or Dresser for the life of the decree.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish both divestitures quickly, and shall cooperate with bona fide prospective purchasers by supplying all information relevant to the proposed sale. Should defendants fail to complete the divestitures by the specified deadlines to purchasers approved by the United States, the proposed Final Judgment provides for the appointment by the Court of a trustee or trustees to accomplish either or both of the divestitures. Section VI relates to the selection and appointment of a trustee to sell the drilling fluid business, and section VII relates to the selection and appointment of a trustee to sell Baroid's diamond bit business. Following the trustee's appointment, only to trustee will have the right to sell the assets to be divested, and defendants will be required to pay for all of the trustee's sale-related expenses. Should the trustee not accomplish the divestiture it is empowered to make within six months of appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment. If a trustee is appointed to sell Baroid's diamond bit business, that business will include a license to manufacture and sell Baroid's steel-bodied diamond bits anywhere in the world, including The People's Republic of China.

Section VIII of the proposed Final Judgment requires that the defendants or the trustee, whoever is responsible for accomplishing the divestiture at the time, notify the United States when a binding contract has been entered so that the United States has an opportunity to evaluate the purchaser. This section gives the United States the right to obtain information about the perspective purchaser. Absent written notice that the United States does not object to the proposed purchaser of the drilling fluid business, a divestiture of that business under section IV cannot be consummated. Upon the United States' objection to the purchaser of Baroid's diamond bit business under section V, the transaction cannot be consummated. Should the United States object to a sale of either business by the trustee, the divestiture cannot be consummated unless approved by the Court.

Section IX of the proposed Final Judgment requires defendants to submit monthly reports to the United States regarding its efforts to divest the drilling fluid business and Baroid's diamond bit business, including the status of

[2] There are two basic designs of diamond drill bits: Matrix diamond bits and steel-bodied diamond bits. Baroid currently manufactures only steel-bodied diamond bits, at the Houston facility. In the past it also manufactured matrix diamond bits at the plant. Some equipment that was used for manufacturing matrix diamond bits is in storage.

discussions or negotiations with any person. Section X states that defendants may finance part of all of either divestiture with the prior consent of the United States. Under section XI of the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestiture has been completed, Baroid Drilling and DBS will be held separate and apart from Dresser and that both businesses, as well as M–I, will be maintained as viable competitors.

The proposed Final Judgment also contains provisions designed to ensure that the purchaser of Baroid's diamond bit business will have the opportunity to hire a work force sufficient to maintain that business as an effective competitor in the United States. Under section XII of the proposed Final Judgment, defendants are required to encourage and facilitate employment by the purchaser of all Baroid employees in the United States, the preponderance of whose duties relate to Baroid's diamond bit business, and will be prohibited from employing these individuals for one year after the divestiture unless those individuals are terminated or not hired by the purchaser. In addition, defendants are required to assist the purchaser so that the purchaser may determine if it would like to hire other Baroid sales, marketing and research and development employees, the preponderance or whose duties do not relate to Baroid's diamond drill bit business. This assistance consists of providing information and consultation regarding the employees' relative job duties and performance.

Finally, section XV provides that the proposed Final Judgment will expire on the tenth anniversary of its entry by the Court.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has just been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V

Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it would withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger W. Fones, Chief Transportation, Energy & Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., room 9104, Washington, DC 20001.

VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment requires that either Dresser's interest in M–I or Baroid Drilling, and Baroid's diamond bit business be sold to a purchaser or purchasers that would use the respective businesses promptly to become viable competitors in both of the product markets alleged in the Complaint. Thus, compliance with the proposed Final Judgment and the completion of the divestitures required by the Judgment would resolve the competitive concerns raised by the proposed transaction, and assure that the respective businesses would remain independent and active competitors to Dresser's drilling fluid and diamond bit businesses in the United States.

Litigation is, of course, always an alternative to a consent decree in a section 7 case. The United States rejected this alternative because the divestitures required under the proposed Final Judgment should prevent the merger of Dresser and Baroid from having a significant anticompetitive effect in either of the two relevant product markets alleged, and will provide substantially all of the relief requested in the Complaint. The United States believes that in the hands of appropriate purchasers, the drilling fluid business that is divested and Baroid's diamond bit business will likely maintain their respective competitive roles in the United States.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed merger alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (115 U.S.C. 15 (b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: December 23, 1993.

Respectfully submitted,

Angela L. Hughes,

Denise L. Diaz,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, room 9104, 555 Fourth Street NW., Washington, DC 20001, (202) 307–6410.

[FR Doc. 94–1038 Filed 1–14–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 12, 1993, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols (7370).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 17, 1994.

Dated: January 6, 1994.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–1126 Filed 1–14–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–4; Exemption Application No. D–9439, et al.]

Grant of Individual Exemptions; Ackman, Marek, Boyd & Simutis Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ackman, Marek, Boyd & Simutis Profit Sharing Plan (the Plan) Located in Kankakee, Illinois

[Prohibited Transaction Exemption 94–4; Exemption Application No. D–9439]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by two individually directed accounts in the Plan (the Accounts) of J. Dennis Marek (Mr. Marek) and Mr. Boyd of 7.68 acres of unimproved land (the Parcel) to Mr. Marek, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale will be a one-time cash transaction;

(b) The Plan and the Accounts will incur no expenses as a result of the transaction; and

(c) As a result of this transaction, the Accounts will receive the greater of: (1) 1/2 each of the original acquisition cost of the Parcel plus any proportionate holding costs; or (2) 1/2 each of the fair market value of the Parcel as determined by a qualified independent appraiser at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 3, 1993 at 58 FR 64011/64012.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, telephone (202) 219–8883. (This is not a toll-free number).

David Rothman, M.D. Employee's Pension Plan and David Rothman, M.D. Employee's Profit Sharing Plan (Collectively, the Plans) Located in Miami, Florida

[Prohibited Transaction Exemption 94–5; Exemption Application Nos. D–9575 and D–9576]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain real property (the Property) by the individual accounts of David Rothman, M.D. (Dr. Rothman) in the Plans to Dr. Rothman, a party in interest with respect to the Plans, provided that the consideration paid for the Property is no less than the fair market value of the Property on the date of the Sale as determined by a qualified, independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1993, at 58 FR 64985.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Stanley Picheny IRA, Arthur Millman IRA, William Millman IRA, and Bernard Blum IRA (Collectively, the IRAs) Located in New York, New York

[Prohibited Transaction Exemption 94–6; Exemption Application Nos. D–9554 thru D–9557]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash redemption by Homemaker, Industries, Inc. of its issued and outstanding shares of common stock (the Shares) held by the IRAs; provided that (1) the fair market value of the Shares is received by the IRAs, as determined on the date of the redemption by a qualified, independent appraiser, and (2) the IRAs do not incur any expenses in connection with the proposed redemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on December 3, 1993, at 58 FR 64016.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Plan of A.H. Williams & Co., Inc. (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 94–7; Exemption Application No. D–9518]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the May 25, 1993 sale to the individually-directed accounts (the Accounts) of six participants in the Plan by A.H. Williams & Co., Inc. (Williams) of certain bonds issued by the Montgomery County Industrial Development Authority, provided the following conditions have been satisfied: (a) The bonds represented no more than 25% of the assets of any of the Accounts at the time of their acquisition; (b) Williams did not receive any fees or commissions in connection with the sale of the bonds to the Accounts; and (c) the purchase of the bonds by the Accounts was on terms at least as favorable to the Accounts as otherwise made available by Williams to unrelated purchasers.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 10, 1993 at 58 FR 59739.

EFFECTIVE DATE: This exemption is effective May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 11th day of January 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–1044 Filed 1–14–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9414, et al.]

Proposed Exemptions; Cascade West Sportswear, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Cascade West Sportswear, Inc. Profit Sharing Plan (the Plan) Located in Puyallup, WA

[Application No. D–9414]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain limited partnership units (the Units) from the Plan to Cascade West Sportswear, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Units is established by an appraiser independent of the Plan and the Employer;

2. The Employer pays the greater of $131,560 or the current fair market value of the Units plus an "opportunity loss" of no less than $171,000;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no commissions or other expenses in relation to the sale.

Summary of Facts and Representations

1. The Employer is engaged in the business of outerwear garment manufacturing. Eric Hilf, a 50-percent shareholder of the Employer, is the trustee of the Plan. The Plan is a profit sharing plan which had approximately 119 participants and total assets of $221,364 as of December 31, 1992. The board of directors of the Employer voted in 1992 to terminate the Plan. The last contribution to the Plan was made for the Plan year ended December 31, 1992.

2. In July 1980 the Plan acquired the Units which represented a 28.6 percent interest in the Good Sam Investors limited partnership (the Partnership). Following its formation, the Partnership acquired an undeveloped parcel of real estate (the Property) near downtown Puyallup, Washington. The Plan initially paid $51,667 for the Units. Since the purchase of the Units, the Plan has contributed additional amounts to the Partnership for its share of the carrying costs of the Property. The Plan also borrowed money from an unrelated commercial bank to pay off the Plan's share of the original seller-financed acquisition of the Property by the Partnership. The Partnership has made a distribution to the Plan totaling $49,028. Net of such distributions, the total amount expended by the Plan in regard to acquiring and holding the Units (including the above $51,667) was $239,730 as of December 31, 1992.

3. The Plan acquired the Units because they originally appeared to represent a good investment. The applicant represents that neither the Employer nor any of its officers has invested separately in the Partnership. The other investors in the Units are unrelated parties. The Property is not adjacent to any property owned by the Employer and has not been used by the Employer or any other party in interest with respect to the Plan since the time of the purchase of the Units.

Several business and residential developments in the area near the Property were underway at the time the Partnership was formed. The Partnership consulted with real estate and engineering firms during the early 1980s to determine the requirements to make the Property salable at an attractive price. However, the City of Puyallup later withdrew a determination statement which would have permitted development of the Property. In 1986 the Partnership sold a portion of the Property to an unrelated party for $180,000, resulting in the above mentioned distribution of $49,028 to the Plan. Since then the Partnership has listed the Property on three occasions with three different real estate brokers but has been unable to sell the Property. A significant portion of the Property has now been classified as wetlands and cannot be developed without substantial additional expense. Plan fiduciaries have concluded that the Property could not be sold to an unrelated party without a substantial price concession or considerable additional expense.[1]

4. The Plan obtained an appraisal on the Property dated March 12, 1993, from Roger D. Ockfen, MAI (Ockfen), a real estate appraiser located in Tacoma, Washington. The applicant represents that Ockfen is independent of the Plan and the Employer. Placing emphasis on the comparable sales approach to value, Ockfen estimated the fair market value of the usable land area of the Property as of February 18, 1993, to be approximately $460,000. Based on this amount, the value of the Units representing the Plan's 28.6 percent interest in the Partnership totaled $131,560.

5. The applicant represents that there is no market for the Units and that they are not expected to appreciate in value. However, the Plan cannot make liquidating distributions to its participants without first selling the Units. Accordingly, the Plan proposes to sell the Units to the Employer. The Employer will pay the Plan the greater of $131,560 or the fair market value of the Units as of the date of sale, based on an updated independent appraisal of the Property, in addition to an "opportunity loss" of approximately $171,000. The "opportunity loss" amount, to be adjusted at the time of sale, was calculated assuming a six percent annual rate of return on the Plan's investment in the Partnership since the initial time of that investment.

The total payments to the Plan will thus exceed the Plan's original acquisition and subsequent net carrying costs of the Units (which totaled $239,730 at the end of 1992). The sale of the Units will be a one-time transaction for cash and the Plan will pay no commissions or fees in regard to the transaction. The applicant represents that any amounts received by the Plan as a result of the proposed transaction which are in excess of the fair market value of the Units will be treated as a contribution to the Plan. However, such contribution will not exceed the limitations of section 415 of the Code.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market value of the Units will be established by an appraiser independent of the Employer; (2) the Employer will pay the greater of $131,560 or the fair market value of the Units on the date of sale plus an "opportunity loss" of approximately $171,000; (3) the sale will be a one-time transaction for cash; and (4) the transaction will remove from the Plan an investment which is not liquid and which is not expected to appreciate in value.

[1] The Department expresses no opinion as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of part 4 of title I of the Act in acquiring and holding the Units. Section 404(a)(1) of the Act requires, among other things, that a plan fiduciary must act prudently and that plan investments must be properly diversified.

Tax Consequences of Transaction

The Department of the Treasury has determined that, if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and thus must be examined under the applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Linton Industries, Inc. Retirement Plan (the Plan) Located in Edmonds, WA

[Application No. D–9496]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the proposed loan (the New Loan) of $485,000 from the Plan to Linton Industries, Inc. (the Employer), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (a) The terms of the New Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the New Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the New Loan; (c) the New Loan is secured by a first lien interest on certain equipment (the Equipment), which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Equipment is at least 200 percent of the amount of the New Loan; (d) the fair market value of the Equipment remains at least equal to 200 percent of the outstanding balance of the New Loan throughout the duration of the New Loan; (e) an independent, qualified fiduciary determines on behalf of the Plan that the New Loan is in the best interests of the Plan and protective of the Plan and its participants and beneficiaries; and (f) the independent, qualified fiduciary monitors compliance by the Employer with the terms and conditions of the New Loan and the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Equipment in the event of default.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by the Employer, who is engaged in the business of precision and general metal fabrication. As of December 31, 1992, the Plan had total assets of $1,942,187 and eighteen participants. The trustee of the Plan is Robert Linton, the sole shareholder of the Employer. Mr. Linton has the sole investment discretion with respect to the Plan assets.

2. On January 26, 1988, the Department granted Prohibited Transaction Exemption (PTE) 88–12 at 53 FR 2103. PTE 88–12 permitted the Plan to lend $240,000 to the Employer (the Original Loan). The Original Loan, made on March 1, 1988, has a ten year term and carries interest at the rate of one and one-half percentage points over the prime rate of Rainier National Bank of Seattle, Washington. It has been amortized in equal monthly installments of principal and interest. The Original Loan is secured by certain other equipment (the Other Equipment) of the Employer. The Original Loan is being monitored by Sidney J. Starr, CPA (Mr. Starr) of Kirkland, Washington, who is serving on behalf of the Plan as the independent, qualified fiduciary. As of October 1, 1993, the remaining principal balance due under the Original Loan was $136,062.

3. The Employer requests an administrative exemption from the Department to permit the Plan to lend $485,000 to the Employer under the terms and conditions described herein. The Employer represents that a portion of the New Loan proceeds will be used to repay the outstanding balance on the Original Loan. The remaining balance of the New Loan proceeds will be used to finance a portion of the $582,400 purchase price of a new 60" Shear Genius Punching/Shearing Cell (the Cell) manufactured by E.W. Bliss Company. The Cell will be utilized by the Employer in its manufacturing operation.

4. The New Loan will be in the principal amount of $485,000. The applicant states that at no time will the amount of the New Loan represent more than twenty-five percent of the Plan's total assets. The New Loan will be secured by a first lien interest on the Equipment, which consists of two pieces of unencumbered machinery owned by the Employer. UCC–1 Filing Statements and a Security Agreement will be filed with the Secretary of State of Washington to reflect the Plan's security interest in the Equipment. In addition, the Employer will insure the Equipment against casualty loss and will designate the Plan as the loss payee of such insurance.

5. The New Loan will have a ten year term and will be evidenced by a promissory note (the Note). The Note will require the Employer to make equal monthly installments of principal and interest amortized over the ten year period. Interest will accrue on the New Loan at the rate of one and one-half percentage points above the prime rate of CityBank (CityBank) of Lynnwood, Washington, an unrelated entity. The interest rate will be adjusted quarterly by the Plan's independent fiduciary in accordance with the prime rate offered by CityBank. The Plan will not incur any fees, commission, or other expenses in connection with the New Loan.

By letter dated July 12, 1993, the Employer received a loan commitment in the amount of $485,000 from CityBank. The terms offered by CityBank are the same as the terms of the Loan, including the quarterly adjustment of the interest rate to one and one-half percentage points above the prime rate.

6. The Equipment consists of a Finn-Power FMC Line and a Bliss 500 ton press. Based upon appraisals performed by Jim Birdsall and Theodore Egleston (the Appraisals), the total fair market value of the Equipment is $1,228,000, which is in excess of 200 percent of the amount of the New Loan.

Jim Birdsall, the president of Nor Star Machine Tools, Inc. located in Bellevue, Washington, appraised the Finn-Power FMC Line. Mr. Birdsall represents that he has experience with Finn-Power presses and the present market for this type of equipment. Mr. Birdsall represents that both he and Nor Star Machine Tools, Inc. are unrelated to and independent of the Employer. In an appraisal report dated June 4, 1993, Mr. Birdsall placed the fair market value of the Finn-Power FMC Line at $792,000, approximately eighty percent of its acquisition price of $990,000.

In a subsequent letter dated December 3, 1993, Mr. Birdsall describes certain factors he considered in determining the fair market value. Mr. Birdsall states that the twenty percent discount of the acquisition price is attributable to two years of equal amounts of depreciation on the Finn-Power FMC Line.

Theodore Egleston, a national sales manager for E.W. Bliss Company located

in Hastings, Michigan, appraised the Bliss 500 ton press. Mr. Egelston states that he has twenty-five years of experience in appraising used Bliss equipment for insurance companies and lending institutions. Mr. Egelston represents that he is unrelated to and independent of the Employer. In appraisal reports dated July 12, 1993 and December 3, 1993, Mr. Egleston placed the fair market value of the Bliss 500 ton press at $436,000, or eighty-four percent of its $520,000 acquisition price. Mr. Egelston's valuation takes into consideration six years of equal amounts of depreciation on the Bliss 500 ton press's acquisition price.

7. Mr. Starr will serve as the qualified, independent fiduciary for the Plan with respect to the New Loan. Mr. Starr represents that he has extensive experience in business and loan transactions. Mr. Starr represents that he is unrelated to and independent of the Employer and its affiliates, including Mr. Linton. Mr. Starr states that he understands and acknowledges his duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan, based upon consultation with counsel experienced with the fiduciary responsibility provisions of the Act.

Mr. Starr represents that all payments under the Original Loan have been paid in a timely manner and that there have been no delinquencies. Mr. Starr also states that the collateral to loan ratio under the Original Loan has always been maintained.

Mr. Starr has reviewed the terms of the New Loan and all of the documents and relevant information in connection with the New Loan, including the Appraisals. Mr. Starr states that the terms of the New Loan compare favorably with the terms of similar transaction between unrelated parties and would be an arm's-length transaction as evidenced by the terms offered by CityBank (see Item #4 above). In addition, Mr. Starr adds that the Loan will be secured by a first lien interest on the Equipment, which has been valued in excess of 200 percent of the New Loan amount. Mr. Starr acknowledges his responsibility to quarterly review the Loan and make the necessary adjustments to the interest rate based upon the prime rate of CityBank.

Mr. Starr has reviewed the current investment portfolio of the Plan and considered the diversification of the Plans assets as well as the liquidity needs of the Plan. Based on this analysis, Mr. Starr believes that the proposed transaction would be in the best interest of the Plan and its participants and beneficiaries as an investment for the Plan's portfolio. Mr. Starr states that the New Loan would be an appropriate and desirable investment for the plan, based on the New Loan's rate of return, the collateral securing the New Loan, the character and diversification of the Plan's other assets, and the projected liquidity needs of the Plan.

Mr. Starr has reviewed the financial condition of the Employer in order to establish its ability to repay the New Loan. In this regard, Mr. Starr states that he has examined the most recent financial statements from the Employee and its credit history. Mr. Starr concludes that the Employer is credit-worthy and, based upon its current ratio and current assets to debt ratio, is financially capable of making the monthly payments required by the New Loan without such payments having an adverse impact on its cash flow.

Mr. Starr represents that he will monitor the New Loan through its entire duration and will take any appropriate action necessary to protect the interests of the Plan and its participants and beneficiaries, include a foreclosure on the Equipment in event of default. Mr. Starr will monitor the condition and adequacy of the Equipment as collateral for the Plan to ensure that the New Loan remains secured by collateral worth at least 200 percent of the New Loan at all times.

Mr. Starr will monitor the Plan's assets to ensure that the amount of the Plan's assets will at all times remain less than twenty-five percent of the Plan's total assets. Mr. Starr will require the Employer to provide additional payments on the New Loan to the Plan, if necessary, to reduce the principal amount of the New Loan to maintain an appropriate ratio between the outstanding principal balance of the New Loan and the Plan's total assets. Mr. Starr has acknowledged his responsibility to monitor compliance of all parties with terms and conditions of the proposed exemption, including the twenty-five percent limitation.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms of the New Loan will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the New Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the New Loan; (c) the New Loan will be secured by a first lien interest on the Equipment, which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Property is at least 200 percent of the amount of the New Loan; (d) the fair market value of the Equipment will remain at least equal to 200 percent of the outstanding balance of the New Loan throughout the duration of the New Loan; (e) Mr. Starr, as independent, qualified fiduciary for the Plan, will determine that the New Loan is in the best interests of the Plan and protective of the Plan and its participants and beneficiaries; and (f) Mr. Starr will monitor compliance by the Employer with the terms and conditions of the New Loan and the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Equipment in the event of default.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Jacobs Corporation Profit Sharing Plan and Trust (the Plan) Located in Harlan, IA

[Application No. D–9561]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of certain assets of the Plan (the Assets), to occur over two (2) consecutive years, by the Plan to the Jacobs Corporation (the Employer), a party in interest with respect to the Plan; provided that: (1) The aggregate purchase price paid by the Employer for all of the Assets is no less than $683,384; (2) the purchase price paid by the Employer in each of the two consecutive years will be at least $341,692; (3) the purchase price paid by the Employer in each of the two consecutive years upon execution of the sale of such Assets is not less than the fair market value of such Assets on the date of each sale; (4) the terms of each of the sales are no less favorable to the Plan than those negotiated in similar circumstances with unrelated third parties; and (5) the Plan will incur no

fees, commissions, or expenses as a result of either of the sales.[2]

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will become effective on the date of publication of the grant of this proposed exemption in the **Federal Register** and will expire upon the earlier to occur of the date which is two years from the grant of this proposed exemption or the date when the Plan no longer owns any of the Assets which are the subject of this proposed exemption.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which provides for employee contributions to be held in employee directed accounts, pursuant to section 401(k) of the Code. As of December 31, 1991, there were 62 participants in the Plan. The assets of the Plan consist of the Assets which are the subject of this proposed exemption and certain guaranteed insurance contracts (GICs). It is represented that, as of September 30, 1993, the value of all of the assets held in the Plan was approximately $1,549,134.

The Employer and sponsor of the Plan is an Iowa corporation, with offices in Harlan, Iowa. The Employer is engaged in the manufacture of mill supplies and trencher parts. Todd Plumb is the sole shareholder of the common stock of the Employer. Since 1990, Todd Plumb has served as the sole trustee for the Plan. Prior to that time, the trustees of the Plan were the Southgate Trust Company, Todd Plumb, and Max Plumb. Further, the GICs were held on behalf of the Plan in the past by Southgate Trust and are now held by First Trust MidAmerica. Norwest Bank Iowa, N.A., located in Des Moines, Iowa is currently acting as administrator of the Plan and will assume the duties of trustee of the Plan, as soon as this proposed exemption is granted.

2. It is represented that since 1983, the Plan held participation interests in a fund which provided debt financing to a series of separate trusts (the Trusts) which engaged in commercial real estate development. In addition, since 1984, the Plan also held equity participation interests in such Trusts. In October 1985, all of the Trusts were merged into the Master Mortgage Fund Trust VII in which the Plan retained ownership interests. Subsequently, on December 15, 1988, Master Mortgage Fund Trust VII was converted into a Master Mortgage Investment Fund, Inc., a real estate investment trust (the REIT). The Plan acquired the Assets through certain transfers of the Plan's holdings in Master Mortgage Fund Trust VII to the REIT.[3]

3. The Assets which are the subject of this proposed exemption consist of the Plan's holdings of participation interests in three funds (the Funds). One of the Funds holds the Preferred Stock of the REIT (the Preferred Fund), another holds Common Stock of the REIT (the Common Fund), and the third fund (the Secured Note I Fund; formerly the Guaranteed Plus Fund) holds notes of the REIT collateralized by mortgages. The REIT, a Delaware corporation, has offices in Overland Park, Kansas. The investors in the REIT include the Plan and other qualified retirement plans. The REIT was organized for the primary purpose of realizing income from investing in and originating short-term loans, junior real estate mortgage loans, wrap around mortgage loans, first mortgage loans with and without participation features, construction loans and pre-development loans to real estate developers, secured by income producing real property.

The REIT completed its initial one-year public offering on November 18, 1989, selling a total of 2,756,474 shares of preferred stock (the Preferred Stock) and 841,542 shares of common stock (the Common Stock) for subscriptions in the amount of $35,980,160. As of December 31, 1990, the REIT had 2,491,522 shares of Preferred Stock and 1,308,669 shares of Common Stock outstanding. It is represented that the change in outstanding stock of the REIT reflects shares issued under the Dividend Reinvestment Plan and the conversion of Preferred Stock to Common Stock.

4. It is represented that between 1984 and 1990, the rate of return received by the Plan on its interest in these Assets or in the Trusts fluctuated from a high of 15.8% in 1984 to a low of 5.8% in 1990. During the period between 1983 to 1991, the percentage of the Plan's portfolio involved with these Assets or with the Trusts varied from a low of 8.66% in 1983, to a high of 63% in October 1991. Through its investment in the Preferred Fund, the Plan owns approximately 43,848 shares of Preferred Stock of the REIT, as of December 31, 1992. Likewise, through its investment in the Common Fund, the Plan owns approximately 211 shares of Common Stock of the REIT, as of the same date.

5. The Secured Note I Fund was established on January 31, 1988, by Master Mortgage Fund Trust VII for the purpose of providing secured debt financing to the related Trusts. After the REIT was established in 1989, the Secured Note I Fund offered a $10,000,000 line of credit to the REIT. Under this line of credit, as of December 31, 1990, the Secured Note I Fund had extended $8,344,522 to the REIT, payable on January 31, 1991. Due to the inability of the REIT to repay this debt on January 31, 1991, the Secured Note I Fund again extended credit to the REIT, in the form of two notes (the Notes) in the amounts, respectively, of $1,677,044 and $6,805,340 and extended the date of repayment under the terms of these Notes to January 310, 1992, which in turn was extended to January 31, 1993. It is represented that as of September 7, 1993, the Notes had not been repaid.

The Notes bear interest at nine percent (9%) per annum adjusted from time to time in accordance with certain interest rates charged by the Merchants Bank of Kansas City and are collateralized by the assets of the REIT, primarily mortgages which are subordinated to unrelated third party notes. The total outstanding balance of these Notes, as of September 30, 1991, was $8,862,016.

The Plan acquired a participation interest in the Secured Note I Fund as a result of a transfer of funds from the Master Mortgage Fund VII at the end of 1989, and another such transfer from the Preferred Fund at the beginning of 1990.

6. On April 17, 1992, the Board of Directors of the REIT unanimously approved the filing by the REIT for financial reorganization under Chapter 11 of the U.S. Bankruptcy Code. Since that time the REIT has been operating as debtor-in-possession under the protection of the U.S. Bankruptcy Court. On its balance sheet for the period ending December 31, 1992, the REIT lists total assets of $23,321,456 and total liabilities of $18,814,132.

7. The Employer has proposed to purchase the Plan's interests in the Preferred Fund, the Common Fund, and the Secured Note I Fund. It is represented that there is no market for the Assets and that the income potential and the market value of such Assets has

[2] For purposes of this proposed exemption, references to specific provisions of title I of the Act, unless otherwise specified refer also to the corresponding provisions of the Code.

[3] The Department notes that the decisions of the fiduciaries on behalf of the Plan, in connection with the acquisition and holding of the Assets are governed by the fiduciary responsibility requirements of part 4, subpart B, of title I. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, subpart B, of title I have been violated regarding the Plan's investment in and subsequent holding of the Assets, and no exemption from such provisions is proposed herein. In this regard, the Department is expressing no views with respect to the establishment, administration, or operation of the REIT, nor has any relief been requested in that regard.

declined. Further, Todd Plumb, as trustee for the Plan, has been repeatedly unsuccessful in attempting to sell such Assets to a third party purchaser or in having the Assets redeemed by the REIT. For this reason, the applicant believes it will be in the best interest of the Plan to invest the proceeds of the Asset sales to the Employer in other securities, the return rate of which will significantly exceed the rate of earnings on the Assets. It is represented that, if such Assets were retained in the Plan, there may not be sufficient liquidity in the Plan to pay cash to beneficiaries or to participants withdrawing from the Plan. In this regard, the sales of the Assets to the Employer will avoid an in-kind distribution of an undivided interest in the Assets to the participants and beneficiaries which would have no immediate value and little long term value. The Assets are valued at a book value to the Plan of $683,384, as of June 30, 1993. In accordance with this value, as of September 30, 1993, the Assets represented approximately 44% of the assets of the Plan. The applicant represents that the book value is approximately the amount invested by the Plan in the Assets.

The Employer proposes, over a period of two (2) years, to purchase annually a portion of such Assets at a price each year of $341,692. This amount is one half of the book value of the Assets, as of June 30, 1993. It has been represented that immediately following the execution of the first sale of the Assets to the Employer, the book value of the Assets remaining in the Plan will constitute no more than 22.06% of the assets held at that time by the Plan, without taking into consideration in determining the value of the Plan's assets either projected contributions by the Employer or by its employees or anticipated income to the Plan from other assets. The Employer has agreed to pay the costs of the exemption application, including providing notice to all interested persons. Further, it is represented that the Plan will incur no fees, commissions, or expenses as a result of the sales of the Assets to the Employer.

8. In an appraisal, dated September 7, 1993, Cyril Ann Mandelbaum, CPA (Ms. Mandelbaum) estimated the fair market value of the Assets which are the subject of this proposed exemption. Ms. Mandelbaum represents that she is qualified to appraise the Assets in that she is a certified public accountant and a member of the American Society of Appraisers. Further, Ms. Mandelbaum represents her independence in that she does not have any present or contemplated future interest in the Assets or any other interest which might tend to prevent her from making a fair and unbiased appraisal of such Assets. According to Ms. Mandelbaum, the estimated value of the Preferred Stock and the Common Stock is $1.19 and $1.18 per share, respectively. Taking into consideration a 28% discount for the minority interest held by the Plan in the Preferred Stock and the Common Stock and a discount of 35% for the lack of marketability of such stock, Ms. Mandelbaum reached a value for the Plan's interest in both the Preferred Stock and the Common Stock at between zero and $.53 per share. With respect to the value of the Secured Note I Fund, Ms. Mandelbaum indicates that there is little likelihood of Notes issued by the Secured Note I Fund ever being paid. Accordingly, in the opinion of Ms. Mandelbaum the Plan's interest in the Secured Note I Fund is assumed to be worthless.

9. In summary, the applicant, represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan will be able to invest the proceeds from such sales in more profitable assets;

(b) The Plan will receive no less than fair market value of such Assets on the date of each sale and in the aggregate the Plan will receive no less than $683,384 for the sale of all of the Assets to the Employer;

(c) Each of the sales will be a one time transaction for cash;

(d) The Plan will incur no costs, fees, commissions, or other expenses as a result of the sales of the Assets to the Employer; and

(e) The proposed sales will avoid an in-kind distribution of an undivided interest in the Assets to the participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404, and 415.[4]

[4] The applicant represents that to the extent the Plan will receive greater than the fair market value for the Assets, the limitations, as set forth in section 415 of the Code, if applicable, will not be exceeded. It is further represented that the allocation of any gain on the sale of the shares will not violate the discrimination provisions of sections 404 and 401(a)(4) of the Code. Inasmuch as interpretations of sections 401, 404 and 415 of the Code are within the jurisdiction of the Internal Revenue Service, the Department expresses no opinion with respect to the applicant's representations of compliance. However, the Department does note that the applicant also represents that the sale of the Assets is being completed solely to prevent an investment loss which might result to the Plan by virtue of the Plan's holding of the Assets and to avoid, without admitting, any possible fiduciary liability with respect to the holding of the Assets by the Plan.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Bangs, McCullen, Butler, Foye & Simmons Employees' Retirement Plan (the Plan) Located in Rapid City, SD

[Application No. D–9598]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 1994, to the proposed lease by the Plan (the Lease) of certain improved real property located in Rapid City, South Dakota (the Property) to Bangs, McCullen, Butler, Foye & Simmons (the Employer), the sponsor of the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, related to the Property;

(C) The interests of the Plan for all purposes under the Lease are represented by an independent fiduciary, Norwest Bank South Dakota, N.A.; and

(D) The rent paid by the Employer under the Lease is no less than the fair market rental value of the Property.

EFFECTIVE DATE: This exemption, if granted, will be effective as of January 1, 1994.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 35 participants and total assets of approximately $6,492,809 as of

December 1, 1993. The Plan is maintained by the Employer, which is a South Dakota general partnership engaged in the practice of law in Rapid City, South Dakota. Investment discretion over the assets of the Plan is exercised by the Plan's three named fiduciaries: Thomas H. Foye, Charles L. Riter, and Patrick K. Duffy, each of whom is a partner in the Employer. The Plan's assets are held in trust by the Norwest Bank South Dakota, N.A. (the Trustee), which was formerly named Norwest Capital Management and Trust Company. The Trustee represents that aside from its function as Trustee, it is independent of the Employer, although the Employer has deposits in, and a current installment loan with, the Trustee's commercial department totalling substantially less than one percent of the total deposits and total loans of its commercial department. Additionally, the Trustee states that the Employer performs professional services for the Trustee, and that total fees paid by the Trustee to the Employer for such services constitute less than one percent of the Employer's gross income.

2. Among the assets of the Plan is the Property, a parcel of improved real property which constitutes the Employer's principal place of business. The Property is located in downtown Rapid City, South Dakota and is improved with a two-story brick office building (the Building) containing approximately 9,600 square feet of office space. The Employer has leased the Property from the Plan under a triple net lease (the Prior Lease) with a term of ten years commencing January 1, 1984 and ending December 31, 1993. The Employer's lease of the Property from the Plan under the Prior Lease was exempt from the prohibitions of section 406 of the Act and section 4975(c) of the Code by virtue of an individual administrative exemption, Prohibited Transaction Exemption 83–172 (PTE 83–172, 48 FR 48880, October 21, 1983).[5] The interests of the Plan for all purposes under the Prior Lease were represented by the Trustee, which served to monitor, on behalf of the Plan, the performance of the Employer under the Prior Lease, and to represent the Plan in the enforcement of its terms and conditions. The Trustee represents that the Employer occupied the Property in compliance with all terms and conditions of the Prior Lease for its duration. The Prior Lease expired on December 31, 1993.

3. Because the Plan's lease of the Property to the Employer continues to constitute a favorable Plan investment, providing the Plan with a good rate of return under protective arrangements, and because it continues to constitute an advantageous arrangement for the Employer, the Trustee and the Employer desired that the Plan continue leasing the Property to the Employer after December 31, 1993, under substantially the same conditions as those of the Prior Lease. Accordingly, the Trustee and the Employer have agreed to a new lease (the New Lease), effective January 1, 1994, which provides for the Plan's continued lease of the Property to the Employer, and they are requesting an exemption for the New Lease under the terms and conditions described herein.

4. The New Lease is a triple net lease for a term of ten years commencing January 1, 1994 and ending December 31, 2003. The interests of the Plan under the New Lease for all purposes are represented by the Trustee. The annual rental under the New Lease is payable in equal monthly installments. Initial rental under the New Lease is $6,000 per month, which is the fair market rental value of the Property as of the commencement of the New Lease, as determined by Richard Kahler (Kahler), a professional real property appraiser in Rapid City, South Dakota. The amount of annual rental paid under the New Lease will be reevaluated every year by the Trustee, and will be increased in accordance with any increases in the Property's fair market rental value, as determined by the Trustee. In no event will the annual rental be decreased under the New Lease. On the fifth anniversary of the New Lease, the Trustee will provide for a new appraisal of the Property and its fair market rental value by an independent professional real estate appraiser of the Trustee's choice. The New Lease requires the Employer to pay all repair and maintenance costs of the Property except with respect to necessary major capital improvements to the Building, its roof, or its electrical, heating, cooling or plumbing systems in excess of $5,000 in any calendar year. Any such excess over $5,000 will be the responsibility of the Plan. The New Lease requires the Employer to pay all real estate taxes on the Property and to carry fire, extended coverage, and public liability insurance on the Property in amounts acceptable to the Trustee with the Plan as the named insured. Under the New Lease the Employer will indemnify and hold the Plan harmless from all penalties, claims demands, liabilities, expenses and losses of any nature arising from the Employer's use of the Property.

5. The Trustee, which represents the Plan for all purposes under the New Lease, will monitor on behalf of the Plan the Employer's performance under the New Lease and will represent the Plan in the enforcement of its terms and conditions. The Trustee represents that it has reviewed and evaluated the Plan's continued lease of the Property to the Employer under the New Lease and has determined that it is in the best interests of the participants and beneficiaries of the Plan. Specifically, the Trustee states that the Employer has proven to be a successful, reliable tenant of the Property and that the Property constitutes the best and most highly productive of all Plan asset investments. The Property was appraised for its fair market value as of December 1, 1993 by Kahler, who represents that as of that date the Property had a fair market value of $607,500.

6. In summary, the applicants represent that the subject transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The New Lease is a triple net lease requiring the Employer to pay costs of repair and maintenance and all taxes and insurance on the Property; (2) The interests of the Plan under the New Lease are represented by the Trustee, an independent fiduciary which will monitor and enforce the Employer's performance under the New Lease; (3) The New Lease ensures that the rental payments will remain no less than the fair market rental value of the Property for the duration of the New Lease; and (4) The Trustee has reviewed the Plan's continued lease of the Property to the Employer under the New Lease and has determined that it is a highly desirable investment for the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404

[5] A proposed amendment to the Prior Lease was the subject of an additional individual administrative exemption, PTE 86–113 (51 FR 32556, September 12, 1986), involving the proposed construction of an addition to the Building and its proposed purchase by the Plan. The Employer represents that the subject amendment to the Prior Lease was never consummated because the Employer chose not to construct the addition to the Building.

of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 11th day of January 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–1043 Filed 1–14–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL INDIAN GAMING COMMISSION

Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval of class III gaming ordinances.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in an unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St. NW., suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Ak-Chin Indian Community
Bois Forte Band of Chippewa Indians
Confederated Tribes of the Chehalis Indian Reservation
Fond du Lac Band of Lake Superior Chippewa Indians
Fort McDowell Mohave-Apache Indian Community
Klawock Cooperative Association
Lac du Flambeau Band of Lake Superior Chippewa Indians
Leech Lake Band of Chippewa Indians
Northern Cheyenne Tribe
Oneida Indian Nation of New York
Robinson Rancheria of Pomo Indian
Saginaw Chippewa Indian Tribe
Twenty-Nine Palms Band of Mission Indians

Anthony J. Hope,

Chairman.

[FR Doc. 94–1051 Filed 1–14–94; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunity in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

Date and Time: January 27, 1994; 8:30 a.m.–5:30 p.m. (Open); January 28, 1994; 8 a.m.–12 Noon (Open).

Place: Rooms 375 and 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Boulevard, room 815, Arlington, VA 22230. Telephone (703) 306–1633.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To plan broader CEOSE participation in the federal sector and to review issues about and assessments of participation rates of all segments of society in science and engineering.

Agenda: January 27: 8:30 a.m. to 12:15 p.m., rm. 375—Discussion of broader CEOSE participation in the federal sector; 12:15 p.m. to 5:30 p.m., rm. 380—Review of assessments of participation rates of all segments of society in science and engineering; January 28: 8 a.m. to 12 Noon, rm. 375—Discussion of issues about the participation rates of all segments of society in science and engineering, directions.

Reason for Late Notice: Delay due to difficulty in identifying desired presenters for scheduled meeting date.

Dated: January 14, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–1041 Filed 1–14–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co. North Anna Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4

and NPF–7 issued to the Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units 1 and 2 (NA–1&2) located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the new 10 CFR part 20. The review of an additional item, to revise the definition of "UNRESTRICTED AREA", was not completed and consequently is not included in the amendment. It will be addressed by separate correspondence.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, Appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impact of the Proposed Action

The proposed revision does not change the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed number of the public. Therefore, there will be no increase in the types or amounts of effluents that may be released offsite, nor an increase in individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed changes.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed changes.

Alternatives to the Proposed Action

Since the Commission's staff has concluded that there is no significant environmental impact associated with the proposed changes to the TS, any alternative to the amendments will have either no significantly different environmental impact or greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Final Environmental Statement related to the operation of NA–1&2, dated April 1973.

Agencies and Persons Consulted

The staff consulted with the State of Virginia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based on the above environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application dated July 16, 1993, as supplemented November 15, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–1096 Filed 1–14–94; 8:45 am]

BILLING CODE 7590–01–M

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee) for operation of the River Bend Station located in St. Francisville, LA.

The proposed amendment would grant one-time extensions for certain technical specification (TS) surveillances which are currently required to be performed beginning February 16, 1994. The licensee is requesting extension of the surveillance intervals because the current operating cycle has been extended, impacting the required completion dates for these surveillances. Performance of these surveillances within the required intervals would require that the plant be placed in an undesirable operating configuration, or would necessitate a plant shutdown. The surveillances for which extensions have been requested will be performed during the fifth refueling outage, scheduled to begin on April 16, 1994.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee's amendment request dated December 8, 1993, contains a detailed list of the specific surveillances for which it is requesting extensions. For the purposes of addressing the no significant hazards consideration determination, the staff has categorized the surveillances by groups in the following discussion. The licensee's determination of no significant hazards is summarized below:

1. The proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

The first group of surveillances includes calibration, logic system functional testing (LSFT), and response time testing of reactor protection system (RPS), isolation actuation system, and emergency core cooling system (ECCS) instrumentation; and calibration of control rod block, remote shutdown and accident monitoring, and feedwater system/main turbine trip system instrumentation. The licensee identified vendor and topical reports which support longer surveillance intervals for certain instruments and elimination of surveillance tests from TS for other instruments. The licensee also stated

that observed drift characteristics, as well as the presence of redundant and diverse channels for most of the affected instrumentation, support extension of these surveillance intervals. The affected surveillances are associated with equipment that is also subject to channel checks and/or functional tests which will continue to be performed during the extension period and should ensure that these systems will perform as designed. Based on the above, no significant increase in the probability or consequences of a previously evaluated accident would occur as a result of extending the surveillance intervals by the relatively short time periods requested.

The next group of surveillances concern demonstration of automatic isolation of reactor water cleanup (RWCU) system containment isolation valves on receipt of an isolation test signal. Due to redundancy provided in the design of the penetrations, periodic testing of the containment isolation system performed during power operation, and the short period of time for which the interval extension is requested, no significant increase in the probability or consequences of a previously evaluated accident would occur as a result of extending this surveillance interval.

The third group of surveillances concern inspection, service tests, and performance tests of dc batteries; and load tests of the battery chargers. Due to the fact that the testing history for the batteries and chargers has been good, the (nominally) weekly pilot cell data has indicated no degradation, and the short period of time the interval is being extended, no significant increase in the probability or consequences of a previously evaluated accident would occur as a result of extending these surveillance intervals.

The fourth group of surveillances concern calibration of RPS electrical protection assembles (EPAs). Based on the inherent lack of drift of the EPAs and the accuracy of the system logic, no significant increase in the probability or consequences of a previously evaluated accident would occur as a result of extending these surveillance intervals.

The licensee also proposed reestablishment of the baseline for the "N times 18 months" cumulative surveillance interval for response time testing by extending the cumulative surveillance interval to coincide with the individual extensions discussed above. Extension of the cumulative interval would not be for more than the individual extensions requested. Due to the fact that the individual extensions have been shown to present no significant increase in risk as discussed above, no significant increase in the probability or consequences of a previously evaluated accident would occur as a result of extending the cumulative surveillance interval for response time testing.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The extension of the surveillance intervals will not result in any changes in plant configuration or operation. Therefore, the extensions will not create the possibility of a new or different kind of accident from any accident previously evaluated or analyzed.

3. The proposed change would not involve a significant reduction in a margin of safety.

For the reasons cited in Criterion 1 above, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 17, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black, Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, U.S. Nuclear Regulatory Commission, Washington, DC 20555: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitioners for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 8, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 13th day of January 1994.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–1215 Filed 1–14–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

North Atlantic Energy Service Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee), for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

The proposed amendment would change the Seabrook Station, Unit 1 (Seabrook) Technical Specifications (TS) to permit operation of the Seabrook core with an expanded axial flux difference (AFD) band from that currently permitted. Operation with the expanded AFD band is supported by continuous monitoring of core power distribution using the fixed incore detector system. Other TS changes allow for fuel design enhancements. The changes to the TS include modification to a number of safety analysis input parameters and assumptions as follows:

- Incorporation of Westinghouse WRB–1 departure from nucleate boiling correlation and revised thermal design procedure.
- Increased core power distribution peaking factors.
- Allowance for positive moderator temperature coefficient.
- Allowance for thimble plug deletion.
- Allowance for increased steam generator tube plugging limit.
- Allowance for new fuel design features.
- Modification of analytical assumptions related to certain surveillance parameters.
- Expansion of AFD band Limiting Condition for Operation.

The proposed amendment would affect TS Sections 3.1.1.3, 3.1.3.4, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.3.3.2, 4.2.1, 4.2.2, 4.2.5, 4.5.2, 5.3, and 6.8.1, Figure 2.1–1, and Tables 2.2–1, 3.3–4, and 4.3–1.

Before issuance of the proposed licensee amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 17, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to

the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110–2624, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 23, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 10th day of January 1994.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–1099 Filed 1–14–94; 8:45 am]

BILLING CODE 7590–01–M

License Termination for the Old Vic, Inc., Site in Cleveland, OH

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination.

This notice is to inform the public that the United States Nuclear Regulatory Commission (the Commission) is terminating Byproduct Material License Number 31–26394–01 issued to Old Vic, Inc. (formerly Victoreen Incorporated) in Cleveland, Ohio. Victoreen Incorporated (Victoreen) used radioactive materials, at its Woodland Avenue facility, for conducting research, instrument calibration, and manufacturing of electronic components, from 1965 until 1987. Victoreen began decommissioning the facility in October 1988. To clarify ownership of the facility and the responsibility for decommissioning, on March 30, 1992, the Commission issued a license to Old Vic, Inc., and terminated Victoreen's license. The Old Vic, Inc., site on Woodland Avenue is

listed on the Commission's Site Decommissioning Management Plan. In November 1993, Old Vic, Inc., completed the decommissioning. Based on the remedial actions taken by the licensee, the Commission's staff's review of the licensee's termination surveys, and the results of the Commission's confirmatory surveys, the Commission concludes that decommissioning activities are complete and the site is suitable for unrestricted use.

This termination will be reopened only if additional contamination, or noncompliance with the decommissioning plan, is found indicating a significant threat to public health and safety. Noncompliance would occur if the licensee had not complied with an approved decommissioning plan or had provided false information.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 11th day of January 1994.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–1097 Filed 1–14–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59 issued to the Power Authority of the State of New York (the licensee) for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The proposed amendment would add Limiting Conditions for Operation (LCO) and Surveillance Requirements to Tables 3.12.1, "Water Spray/Sprinkler Protected Areas", and 4.12.1, "Water Spray/Sprinkler System Tests" and clarify the associated Bases to reflect the installation of a new full area fire suppression system in the east and west cable tunnels. This new full area fire suppression system was installed because the previous sprinkler system did not provide coverage to some cable trays and the sprinkler head orientation did not provide full coverage of the cable trays where it was installed. The proposed amendment would also correct other portions of Tables 3.12.1 and 4.12.1 for consistency with changes made to reflect the east and west cable tunnel modification.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the Technical Specifications to incorporate a modification to the James A. FitzPatrick Fire Protection System and to make existing Technical Specifications consistent with the specifications proposed for the modification. The modification will improve the ability of the plant's fire protection system to detect and suppress fires. The modified system has been designed, analyzed and constructed in accordance with fire protection system requirements. These changes to the Technical Specifications assure that the modified system is operable by periodic surveillance and that required actions are taken if it is not available. The surveillance requirements meet or exceed past requirements.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The only potential for a new or different type of accident arises from different failure mechanisms of the system. An analysis of flooding has demonstrated that there are no associated failures of shutdown equipment. The new system has been designed and constructed so that there is no damage to safety related equipment due to missiles or water spray. The modification to the first protection system provides additional protection for possible fires in the east and west cable tunnels through increased spray coverage. There are no changes to plant operations or operating procedures other than Surveillance Requirements. The Surveillance Requirements are consistent with past plant practices and industry codes and standards.

3. Involve a significant reduction in the margin of safety.

The piping has been designed and constructed to prevent damage to safety related equipment due to missiles or water spray during a seismic event. The modification improves the plant's capability to detect and suppress fires. The potential for flooding or water damage has been evaluated and does not result in failure of shutdown equipment. The LCO and Surveillance Requirements meet or exceed past practice. This change results in no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments

received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 17, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Penfield Library, State University College of New York, Oswego, NY 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles M. Pratt, Power Authority of the State of New York, 1633 Broadway, New York, NY 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 22, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Penfield Library, State University College of New York, Oswego, NY 13126.

Dated at Rockville, Maryland, this 10th day of January 1994.

For the Nuclear Regulatory Commission.

Brian C. McCabe,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–1098 Filed 1–14–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the thirty-first meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: February 23, 1994, at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's pay agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–999 Filed 1–14–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane, (202) 942–8800.

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Proposed Rule: Rule 18f–3, File No. 270–385.

Proposed Amendments: Form N–1A, File No. 270–21, Form N–14, File No. 270–297, Rule 34b–1, File No. 270–305.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted for OMB approval, proposal of Rule 18f–3 under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"), Forms N–1A and N–14 under the Investment Company Act and the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) (the "Securities Act"), and proposed amendments to rule 34b–1 under the Investment Company Act.

Proposed rule 18f–3 would permit any registered open-end management investment company that satisfies its conditions to issue multiple classes of shares representing interests in the same portfolio of securities but having different arrangements for shareholder services, distribution, or both. Proposed rule 18f–3 would require that a multiple class fund adopt a written plan setting forth the different class arrangements. The Commission estimates that approximately 675 registered open-end, management investment companies would use proposed rule 18f–3 and that the annual reporting burden would be approximately one hour per respondent, for a total of about 675 burden hours.

The Commission also is proposing amendments to Forms N–1A and N–14 and rule 34b–1 that would require certain disclosure by multiple class funds and feeder funds in master-feeder structures about the classes or feeders not offered in the prospectus, or sales literature. Form N–1A is the registration statement used by open-end management investment companies other than small business investment companies and insurance company separate accounts. The average additional burden imposed by the proposed amendments to Form N–1A is estimated to be .4 hours per registrant for a total of about 1,080 additional burden hours. Thus, the total annual burden for Form N–1A per registrant would become 1059.96 hours per registrant and the total for all registrants would be 2,861,892 hours.

Form N–14 is the registration statement used by investment companies to register under the Securities Act securities to be issued in mergers and other forms of business combination. By cross-referencing a number of items in Form N–1A, Form N–14 requires disclosure of some of the same information regarding the management investment companies involved in the transaction. Approximately 95 registrants filed Form N–14 in 1992, with an estimated compliance time of 2,500 hours per registrant. The maximum additional burden imposed by the amendments is estimated to be .3 hours per registrant for a total additional burden of 28.5 additional hours for all registrants. The total annual burden for Form N–14 would be 2,500.3 hours per registrant and 237,528.5 hours for all registrants.

Rule 34b–1 governs the use of performance information in investment company sales literature. In 1992, approximately 287 respondents used performance data in their sales literature and rule 34b–1 imposed a total annual burden of 3,444 hours on those respondents. The proposed amendment to rule 34b–1 would impose an average additional burden of .3 hours per response on those 287 respondents, each of which makes approximately five responses per year, for a total additional annual burden of 430.5 hours. Thus, the total annual burden imposed by rule 34b–1 would become 3,874.5 hours.

In total, proposed rule 18f–3, and the proposed amendments to Forms N–1A and N–14 would impose an additional total burden on all respondents of 2,214 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative study of the costs of Commission rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget.

(Project numbers 3235–0307, 3235–0336, and 3235–0346), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 5, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1067 Filed 1–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33448; File No. SR–Amex–92–10]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Various Rule Revisions

January 10, 1994.

I. Introduction

On February 28, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend various exchange rules. On May 4, 1992, the Amex submitted to the Commission Amendment No. 1 to the proposal.[3] On June 2, 1992, the Amex

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Amex submitted a letter to the Commission adding proposed Commentary .03(d) to Rule 111, Restrictions on Registered Traders, to state that members who are not regular members (as defined in Article IV of the Amex Constitution) may enter orders in accordance with Commentary .03, as described below, only in securities which members of their class are otherwise entitled to trade while on the Floor of the Exchange. Amendment No. 1 also would amend Rule 950(c), Floor Rules Applicable to Options, to provide that Rule 111 and certain of its commentaries shall apply to options

submitted to the Commission Amendment No. 2 to the proposal.[4] On June 25, 1993, the Amex submitted to the Commission Amendment No. 3 to the proposal.[5]

Notice of the proposal appeared in the Federal Register on July 9, 1993.[6] No comments were received on the proposal. This order approves the proposed rule changes.

II. Discussion and Findings

The Exchange conducted a review of its rules and determined that certain revisions were necessary to conform the Amex rules to recent changes to comparable NYSE rules or to update certain rules which contain provisions which are no longer applicable or which fail to address current concerns.[7]

The Commission has carefully reviewed the Amex's proposed rule changes and concludes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with sections 6(b)(5), 6(b)(8), 11(b), and 11A(a)(1) of the Act.[8] The Commission supports the Amex's efforts to continue to review the form and substance of market trading regulation in response to changes in market structure. The Commission believes that it is important to market quality that the Exchange have a regulatory program that is tailored to the current market structure. The Commission believes that the proposed rule changes will be helpful in updating the Amex market structure and trading rules and will further the purposes of the Act.[9] The Commission's detailed discussion regarding the significant changes proposed by the Amex follows.

The Amex proposes to amend several rules so that they correctly identify exchange procedures or facilities. The Commission believes that these rule changes are appropriate and logical revisions to the Amex Rules.[10]

The Amex proposes to amend other rules so that such rules either conform to similar NYSE Rules, are made clear, or are responsive to current market conditions. The Commission believes that these rule changes are also appropriate and logical revisions to Amex Rules. These rule changes are discussed below.

Rule 103(a)—Dealings When Option Granted or Held: Rule 103(a) prohibits a member, while on the floor, from buying or selling any stock if the member or his firm holds or has granted an option to buy or sell the stock. This rule was adopted prior to 1961. In December 1985, Exchange Act Rule 175 was revised to permit a stock specialist to hedge his stock position with options.[11] The Exchange asserts that Rule 103(a) should, therefore, similarly be revised to permit a stock specialist to engage in listed options transactions to hedge his stock position.

The Commission believes that this rule change is appropriate in order to ensure uniformity among Amex Rules and in order to conform Amex Rules to Exchange Act Rule 175. This change will serve to facilitate transactions pursuant to section 6(b)(5) of the Act.[12]

Rule 103(c)—Discretionary Transactions: This rule provision prohibits the regular or options principal member, while on the floor, from executing or causing to be executed on the Exchange[13] any transaction for the purchase or sale of any security with respect to which transaction such member is vested with discretion as to the choice of a security

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transactions. See letter from Geraldine Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 1, 1992.

[4] The Amex submitted a letter to the Commission requesting that its proposed amendment to Rule 170, Commentary .02, which would permit specialists to liquidate positions in specialty stocks on zero destabilizing ticks without Floor Official approval, be withdrawn from the instant proposed rule change. See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 29, 1992. Proposed Rule 170 was refiled in File No. SR–Amex–92–26.

[5] Amendment No. 3 proposes additional changes to Rules 7, 108(c), 115 and 131(h). The proposed changes include: minor revisions to Rule 7, Commentary .01, in order to conform the reprint of Exchange Act Rule 10a–1 contained in the rule to its actual text; changes to Amex Rule 108(c), to include a citation to Section 11(a) of the Exchange Act; minor revisions to Rule 115, Commentary .02, to conform the reprint of Exchange Act Rule 11Ac1–1 to its actual text; minor clarifying language changes to Amex Rule 131(h). See letter from Geraldine Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated June 24, 1993.

[6] See Securities Exchange Act Release No. 32572 (July 1, 1993), 58 FR 37041 (July 9, 1993).

[7] The Exchange proposed various revisions to Rules 2, 6, 7, 22, 103, 108, 110, 111, 115, 124, 126, 131, 134, 135, 154, 155, 156, 178, 179, 419, 420, 550, 560, 950 and 959.

[8] 15 U.S.C. 78f(b)(5), 78f(b)(8), 78k(b), and 78k–1(a)(1) (1988).

[9] The texts of the actual Exchange rules to be amended and complete descriptions of the proposed amendments are set forth in the Exchange's original filing and in Amendments No. 1, 2 and 3 thereto, all of which are available for inspection at the Commission and at the principal office of the NYSE.

[10] The Exchange proposes the following such changes:

Rule 2—Visitors: Currently, this rule refers to the admission of visitors to the "Gallery" and the "Trading Floor." The Commission agrees that since the "Gallery" has been non-existent for many years, reference to it should be deleted.

Rules 6 and 550—Execution of Bonds on Exchange and Secondary Distributions: Currently, these rules refer to the "Rulings and Inquiries Department" as the department at the Amex to be contacted relative to those rules. Such department no longer exists ("Rulings" and "Inquiries" are separate departments). The Commission therefore agrees that the reference should be changed to the "Rulings Department."

Rule 7—Short Sales: Commentary .01 is a reprint of Exchange Act Rule 10a–1. The Exchange states that the reprint is an outdated version of the Commission rule and should be revised. Amendment No. 3 proposed minor language changes to conform the reprint of Exchange Act Rule 10a–1, which is contained in Commentary .01 of the rule, to its official format. The Commission believes that the proposed amendment makes appropriate conforming changes and should therefore be approved.

Rule 22—Authority of Floor Officials: This rule contains a cross reference which lists seventeen rules upon which Floor Officials may rule. Currently, however, there are at least three other rules relating to the duties and powers of floor officials which are not included in the list, and with future rule revisions, additional rules will provide for Floor Official involvement. Rather than attempt to provide an all-inclusive list, the Amex proposes that the cross reference in Rule 22 be deleted. The Commission believes that the proposed changes are appropriate and should therefore be approved.

Rule 134—Cash and Seller's Option Transactions: This rule requires Floor Official oversight for two transactions that are not "regular way"—"cash" and "seller's option" transactions. Although "next day" transactions are also not "regular way" transactions, they are not included in the rule. The Exchange states that this appears to have been an oversight at the time Rule 124 was revised to permit "any additional settlement periods as the Exchange may from time to time determine." Therefore, the Commission agrees that "next day" transactions should be referred to in Rule 134.

Rule 178—Responsibility of Specialist: This rule establishes the liability for losses in those situations where a member firm has not received a report from the specialist on an order that was executed or should have been executed. The Exchange states that time-frames cited in the current rule are no longer appropriate in view of the time limits set forth in Rule 719 regarding "Next Day Comparison of Exchange Transactions." The Commission agrees that Rule 178 should therefore be revised to conform its time limits to Rule 719.

Rule 179—Orders in Rights: Because this rule also applies to warrants, the title of this rule should be redesignated as "Orders in Rights and Warrants." The Commission agrees that this change is appropriate.

Rules 419 and 420—Statements of Accounts and Mailing Statements: Commentaries to both rules refer to "Membership Compliance Division." The Exchange states that the correct title of that division is "Compliance and Surveillance Division" and the commentaries to both rules should be revised to reflect that title. The Commission agrees that these changes are appropriate.

Rule 560 (i)—Special Offerings and Special Bids: Paragraph (i) incorporates the provisions of former Article VI, which governed floor brokerage commissions, into Rule 560. The Exchange states that Paragraph (i), however, should be deleted since Article VI, to which it relates, was rescinded in 1976. The Commission agrees that this change is appropriate.

[11] See Securities Exchange Act Release No. 22670 (November 27, 1985), 50 FR 49808 (December 4, 1985) (File No. SR–Amex–85–18).

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] This includes by means of the issuance or acceptance of a commitment or obligation to trade.

to be bought or sold, the total amount of any security to be bought or sold, or whether any such transaction shall be one of purchase or sale. The prohibition applies except when the member is executing a transaction for a bona fide cash investment account or for the account of a person who due to illness, absence, etc., is unable to effect transactions for his own account. It is proposed that the exceptions be deleted since they are not appropriate in today's market. The NYSE has adopted a similar revision to a comparable rule.[14]

The Commission agrees that the proposed amendment to Rule 103(c) is substantially similar to recent revisions to NYSE Rule 95 and therefore should be approved. In the Commission's order approving the NYSE's amendments to Rule 95, we stated that the deletion of the exceptions would strengthen the rule by further limiting the authority of members to execute discretionary orders.[15] This change will help to prevent fraudulent and manipulative acts and practices in accordance with section 6(b)(5) of the Act.[16]

Rule 108—Priority and Parity at Openings: Paragraph (c) discusses parity at openings of limit orders in the crowd with orders on the specialist's book. The Exchange states that because Exchange Act Rule 11a1–1 impacts on the types of orders which may be on parity, Rule 108(c) should include a reference to it.[17]

The Commission agrees that it is appropriate for Rule 108 to include a reference to Exchange Act Rule 11a1–1 since it specifically deals with transactions yielding priority, parity, and precedence. This change is designed to promote just and equitable principles of trade pursuant to section 6(b)(5) of the Act[18] as it will serve to clarify Rule 108.

Rules 110 and 111—Registered Traders and Restrictions on Registered Traders: These rules, which provide that only members registered as traders may trade for their own accounts while on the Trading Floor, were adopted in 1964 to restrict on-floor transactions by floor members, who, it was believed, had trading advantages due to their presence on the trading floor when market news unfolded, and due to their ability to quickly react to such information. The Exchange believes that since current communications technology makes information readily available to off-floor market participants, there is no reason to continue to so restrict members' on-floor orders.[19]

The Amex propose to rescind the current Rule 111, Commentary .03 and adopt a new Commentary .03 (a) through (d).[20] Such new commentary will permit members, while on the trading floor, to enter orders for their own accounts provided that such orders are entered through an on-floor communications facility and sent to an off-floor clearing firm's order room where a time-stamped record of the order is maintained before the order is retransmitted to the trading floor.

Proposed Commentary .03(a) generally provides that a member using a communication facility on the floor of the Exchange to enter an order for his own account shall be deemed to be initiating an off-floor order if such order is routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before such order is re-transmitted to the floor for execution.

Proposed Commentary .03(b) generally provides that any order entered by a member for any account in which it (or its officer, allied member or employee) is directly or indirectly interested, or for any discretionary account serviced by the member organization, following a conversation with the member or employee in that organization who is on the floor, shall be deemed to be an off-floor order, provided that such order is transmitted to the floor through an order room or other facility regularly used for the transmission of public orders to the floor; where a time-stamped record of the order is maintained; or an exception is available in Rule 111 (f), (g), or (h).

The Commission believes that proposed Commentary .03 (a) and (b) to Rule 111 (Restrictions on Registered Traders) are substantially similar to those made to NYSE Rule 112.10 (Orders Initiated "Off the Floor") and those made to NYSE Rule 112.20 ("On the Floor" and "Off the Floor"); therefore the rationale for approval of both sets of rules is substantially the same. The Commission finds that the rules dealing with on-floor orders provide a practical means for a member on the floor to enter an order for his own account without having to physically leave the floor, as is currently necessary. The Commission further finds that the amendments to Rule 111, Commentary .03 (a) and (b) more accurately reflect the status of on and off-floor orders. The Commission believes that the requirement of routing on-floor orders upstairs and then back down to the floor will continue to prevent any undue advantage of floor immediacy from accruing to orders designated as off-floor.[21]

Proposed Commentary .03(c) generally provides that no member shall execute or cause to be executed, on the Exchange, any order for any account in which such member, member organization, or any member, allied member, or approved person in such organization or officer or employee thereof, is interested or for any discretionary account serviced by the member, in contravention of any Exchange policy against frontrunning of transactions that the Exchange may from time to time adopt and make known to its members.

The Commission believes that, like the similar NYSE Rule (112.20(d)), proposed Commentary .03(c) to Rule 111 promotes conduct consistent with just and equitable principles of trade, in accordance with section 6(b)(5) of the Act, by explicitly incorporating the frontrunning policy into rules governing competitive trader conduct.

Proposed Commentary .03(d) generally provides that members who are not regular members (as described in Article IV of the Exchange Constitution) may enter orders in accordance with the Commentary .03 only in securities which members of their class are otherwise entitled to trade while on the floor of the Exchange.

The Commission believes that Commentary .03(d) (along with Rule 950(c)) is appropriate in order to ensure that members other than registered traders, such as limited trading option

[14] The Amex states that the proposed amendment is based on NYSE Rule 95.

[15] See Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1991).

[16] See *supra* footnote 12.

[17] Amendment No. 3 further amends Rule 108(c) to include a citation to Section 11a of the Exchange Act.

[18] See *supra* footnote 12.

[19] The Amex proposes to both add and delete language from Commentary .02 to Rule 111. Amex Rule 111, Commentary .02 says that the Rule 111 provisions do not apply to transactions initiated by registered traders for an account in which they have an interest, "unless such transactions, although originated off the floor, are deemed on-floor transactions under the provisions of these Rules." The Exchange proposes to delete the aforementioned quoted text from Commentary .02. The Exchange proposes to add the following to Rule 111, Commentary .02: "However, an off-floor order for an account in which a member has an interest is to be treated as an on-floor order if it is executed by the member who initiated it." The Commission believes that the changes to Commentary .02 to Rule 111 are appropriate clarifying changes to the Rule, and that these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act, in accordance with section 6(b)(8) of the Act.

[20] The Amex proposed new Commentary .03 Sections (a) through (c) in the original proposal and added Section (d) in a May 4, 1993, amendment to the proposal.

[21] The interpretation of "off-floor" contained in the amendments to Rule 111, Commentary .03 only applies to Rule 111 and does not govern or control the meaning of "off the floor" for purposes of Exchange Act Rule 11a2–2(T) (the "effect versus execute" rule).

permit holders, may enter orders for their accounts while on the floor.

Rule 110—Registered Traders: In addition to the changes made to Rule 111, the Exchange also proposes to amend Rule 110 to add a reference to Rule 111. As amended, Rule 110 would provide that members may not initiate a transaction while on the floor for an account in which they have an interest unless the member is registered as a registered trader with the Exchange, except as provided in Rule 111, Commentary .03. The Commission believes that this revision permits Rule 110 to maintain its proper relationship with Rule 111 as revised. The NYSE has adopted similar revisions to its comparable rules.[22]

The Commission believes that the changes to Rule 110 are appropriate unifying changes in furtherance of the purposes of the Act designed to promote just and equitable principles of trade which generally serve to protect investors and the public interest pursuant to section 6(b)(5) of the Act.[23]

Rule 115—Exchange Procedures for Use of Unusual Market Exception: The Exchange proposes to add a new Commentary to Rule 115. This Rule contains exceptions to Exchange Act Rule 11Ac1–1, but currently there is no reference in Rule 115 to the requirements of Rule 11Ac1–1. The Exchange therefore proposes that Commentary .02 be added to Rule 115 to incorporate the text of Rule 11Ac1–1, as has been done by the NYSE in its Rule 60.[24]

The Commission agrees that it is appropriate for Rule 115 to incorporate the text of Rule 11Ac1–1 in order to create a more thorough Rule, thereby providing the members with clearer guidance. This change will promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[25]

Rule 124(b)—Types of Bids and Offers: In discussing "next day" delivery of rights and warrants, the rule indicates that "bids and offers in rights and warrants shall specify 'next day' in accordance with Rule 17." The Exchange proposes that Rule 124 be revised to clarify that the reference in Rule 17 relates only to expiring rights and warrants.

The Commission believes that the addition of the word "expiring" to Rule 124(b) is appropriate to clarify that the next day provisions discussed therein only refer to expiring rights and warrants. This change will, therefore, promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[26]

Rule 126(e)3—Precedence of Bids and Offers—Sale Removes All Bids: Paragraph 3 generally provides, with one exception, that a sale removes all bids from the floor.[27] The Exchange proposes to amend paragraph 3 of Rule 126(e) to add a provision stating that the aforementioned applies only when not in contravention of Exchange Act Rule 11Ac1–1.

The Commission believes that the aforementioned change to Rule 126(e)3 is an appropriate clarifying change to the Rule.

Rule 126(h)—Precedence of Bids and Offers—Disputes: Rule 126(h) provides that, unless resolved by the members involved, disputes shall be settled, if practicable, by a vote of witnesses to a trade, and if not so settled shall be settled by a Floor Official.[28] It is proposed that the rule be revised (and redesignated 126(i) due to a change in another rule filing) to provide that disputes will be settled by a Floor Official who may, in his deliberations, consider the comments of witnesses, and where only the amount traded was in dispute, the size of the order held by those involved in the dispute. The NYSE has adopted a similar revision to its comparable rule.[29]

The Commission believes that, like the changes to NYSE Rule 75, the changes to Rule 126(i) appropriately increase the level of oversight brought to the resolution of trade disputes by removing the membership voting procedures and replacing them with specified factors for Floor Official consideration. This increased oversight will thus promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[30]

Rule 131(a)—Types of Orders—Market Orders: Rule 131(a) provides that a market order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the trading crowd. Rule 131(a) further provides that the responsibilities of brokers handling market, limited price, at the close, and not held orders are set forth in Rule 156. It is proposed that "switch orders" be included in the reference to the orders brokers handle. This revision follows the inclusion of such orders in Rule 156.

The Commission believes that the addition of switch orders is appropriate as such orders are being added to Rule 156.

Rule 131(f)—Types of Orders—At the Opening Order: It is proposed that the phrase "at the opening of the stock" be revised to clarify that an "at the opening order" is to be executed "on the opening trade in the stock." This revision incorporates into the rule a policy that is currently in effect on the Exchange.

The Commission believes that because the proposed amendment would clarify the definition of an at-the-opening order, it should be approved. The Commission agrees with the Exchange that the clarifications to the definition of "at-the-opening-only" orders should help remove any misconceptions about when such orders are eligible for execution. Accordingly, the proposed rule change clarifies that while an "at-the-opening-only" order is eligible to be executed only on an opening trade, such an order is not cancelled if the stock opens with a quotation rather than a trade. In addition, the NYSE has revised its comparable rule in the same manner.[31]

Rule 131(h)—Do not reduce orders ("DNR"): Rule 131(h) relates to DNR orders, which are not reduced to reflect ordinary cash dividends but are reduced for other distributions such as when a stock goes "ex" a stock dividend or ex rights. Currently, the rule defines DNR orders to include a limited order to buy, or a stop limit order to sell a round lot or odd lot or a stop order to sell an odd lot which is not to be reduced by the amount of an ordinary cash dividend on the ex-dividend date. The rule further provides that a DNR order applies only to ordinary cash dividends; it should be reduced for other distributions such as when a stock goes "ex" a stock dividend or ex rights. The proposed change would add "a stop order to sell" to the list of DNR orders. The Exchange would also add "a special cash dividend" to the list which provides when a DNR

[22] The Amex states that the proposed amendments are based on NYSE Rules 111 and 112.

[23] See *supra* footnote 12.

[24] Amendment No. 3 proposes minor revisions in order to conform the reprint of Exchange Act Rule 11Ac1–1 which is contained in Commentary .02 to the rule, to the actual language of the Rule.

[25] See *supra* footnote 12.

[26] See *supra* footnote 12.

[27] Rule 126(e)3 provides that a sale shall remove all bids from the floor except that, if the number of shares of stock or principal amount of bonds offered exceeds the number of shares or principal amount specified in the bid having precedence, a sale of the unfilled balance to other bidders shall be governed by the provisions of the Rules as though no sale had been made to the bidder having precedence.

[28] Rule 136(h) also provides that said Floor Official may make separate and different rulings with respect to active openings when bids and offers are simultaneous and with respect to odd-lots.

[29] The Amex states that the proposed amendment is based on NYSE Rule 75.

[30] See *supra* footnote 12.

[31] See NYSE Rule 13.

order should be reduced for other distributions.[32]

The Amex states that in 1987, the Exchange changed Rule 154 to permit specialists to accept stop orders on round lots[33] and therefore, it proposed to modify Rule 131(h) to include stop orders to sell round-lots.[34] The Exchange would also like to add special cash dividends to the list providing when a DNR order should be reduced for other distributions because such dividends are unexpected and will not have otherwise been taken into account.

The Commission believes that the changes to Rule 131(h) bring this rule into conformance with other Amex Rules and lead to a correct definition of DNR orders in furtherance of the purposes of the Act. The changes promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.

Rule 131(i)—Types of Orders—Fill or Kill: The definition of a "fill or kill" order in this paragraph includes a reference to two other types of orders, "immediate or cancel" and "all or none." The Exchange believes that these references incorrectly suggest that such orders are comparable in nature when these three types of orders have unique characteristics. For instance, a "fill or kill" order is to be executed in its entirety on presentation in the crowd or immediately cancelled. "Immediate or cancel" orders require an immediate execution of all or part of the order with the balance cancelled. The "all or none" order is to be executed in its entirety in one transaction but is not cancelled if not executed immediately on presentation in the crowd. It is therefore proposed that the reference to "immediate or cancel" and "all or none" orders be deleted, because this paragraph of the rule is not applicable to those types of orders.

The Commission believes that, because this amendment appropriately clarifies the definition of a fill or kill order, the amendment should be approved. This change will promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[35]

Rule 131(l)—Types of Orders—Not Held Order: Currently, Rule 131(l) defines a not held order as a market or limited price order marked "not held," "disregard tape," "take time," or which bears any such qualifying notation. The Exchange proposes that orders marked "buy on the print" or "sell on the print" be included in the types of orders deemed to be "not held orders" because by their terms, these orders can only be executed if a print takes place at its limit. The Exchange further asserts that as with other "not held" orders, there are no assurances that the broker handling the order will be able to execute the order at that same price.

The Commission believes that "buy or sell on print" orders are appropriately classified as "not held" orders because brokers cannot guarantee execution at the designated "print' price. Classifying such orders as "not held" orders should serve to put customers on notice that they bear the price risk of an execution at a price other than the "print" price. The Commission approved a similar revision to the comparable NYSE Rule.[36] The Commission believes that these changes will serve to protect investors and the public interest in accordance with section 6(b)(5) of the Act[37] by clarifying the definition of "not held" orders.

Rule 135—Cancellations: Currently, Rule 135 only permits a member or member organization to cancel a transaction if it was made in error or for other proper reason, and unless in each case prior approval of the cancellation is obtained from a Floor Official. The Exchange states that this permits unilateral cancellations. The Exchange proposes that Rule 135 be revised to provide that a member may only cancel or revise a transaction if it was made in error or the cancellation or revision is for other proper reason, and unless both the buying and selling members agree to the cancellation or revision, and prior approval of the cancellation or revision is obtained from a Floor Official. The Exchange also proposes that the title of the rule be revised to indicate that the rule relates to revisions in, as well as cancellations of, transactions.

The Exchange further proposes to amend Commentary .02 to Rule 135 to require that when a transaction is not cancelled but the member intends to assume for his or her own account the contract made for a customer, the provisions of Rule 390 apply, and any required consent of the Exchange under that rule is to be obtained from the Compliance and Surveillance Division instead of through the Membership Compliance Division.

The Commission believes that the proposal should be approved because it will increase oversight of cancellations or revisions as well as prevent unilateral cancellations. The proposal is modeled after the comparable NYSE Rule (NYSE Rule 128B.10—Publication on the tape or in the sales sheet) which requires the cancellation of a transaction to be agreed to by both sides of the transaction in question in addition to obtaining the approval of a Floor Official. In addition, the change in designation in Commentary .02 to the Compliance and Surveillance Division is necessary so that this rule identifies the appropriate Division governing the regulated conduct.

Rule 154, Commentary .03—Orders Left With Specialist: Commentary .03 provides that specialists may not accept "not held" orders or orders with such qualifications as "keep the best bid or offer," "disregard tape," "take time," and scale orders without specific amounts and prices orders. The Exchange proposes that Commentary .03 be revised to include "buy on the print" and "sell on the print" as additional types of orders which a specialist is prohibited from accepting because under Rule 131, a "buy on the print" or "sell on the print" order is deemed to be a "not held" order.

The Commission believes that this change is an appropriate "housekeeping" amendment that should be approved in conjunction with approval of the proposed amendment to Rule 131.

Rule 154, Commentaries .06 and .07—Orders Left With Specialist: Current Commentary .06 provides that all good 'til cancelled ("G.T.C.") orders on a specialist's book must be cancelled on such periodic dates as may be prescribed by the Exchange, unless properly confirmed or renewed as prescribed by the Exchange. The Amex proposes to delete current Commentary .06. Current Commentary .07 requires specialists to return receipt stubs of G.T.C. orders, cancellations and confirmations on the same day in which they are received and it requires specialists to return receipt stubs of periodic confirmations of renewals promptly as prescribed by the Exchange. Current Commentary .07 also requires confirmations of cancellations of orders and confirmations or renewals of G.T.C. orders to be dated, and duplicate receipt stubs to be maintained by specialists. The Exchange proposes to delete references to the return of receipt stubs of periodic confirmation or renewals in Commentary .07 which will be

[32] The Exchange states that the amended definition of a DNR order would be identical to the definition used by the NYSE.

[33] See Securities Exchange Act Release No. 24021 (January 21, 1987), 52 FR 3370 (February 3, 1987) (File No. SR–Amex–84–32).

[34] Amendment No. 3 proposes minor clarifying language changes.

[35] See *supra* footnote 12.

[36] The Commission approved similar changes to NYSE Rule 13—Definition of Orders.

[37] See *supra* footnote 12.

renumbered as .06.[38] The Exchange also proposes to delete the requirement that receipt stubs be signed by the specialists. In accordance with the amendment, specialists will just have to stamp their name on such receipts. Finally, the Exchange proposes to delete the requirements that confirmations or renewals of G.T.C. orders be dated and duplicate receipt stubs kept for them. The Exchange states that these proposed changes are based upon the NYSE's recision of its Rule 123A.55 which had required the periodic confirmation of G.T.C. orders on the specialist's book.[39] The Exchange also states that these provisions are unnecessary in view of the automated recordkeeping ability of member firms.

The Commission agrees that the changes to Rule 154, Commentary .06 and .07 should be enacted in order to update and streamline order handling provisions and to bring the Amex Rules into line with automated exchange systems. These changes are in accordance with section 11A(a)(1) of the Act which provides that new data processing and communications techniques create the opportunity for more efficient and effective market operations. The changes to Commentary .06 and .07 will also promote equitable principles of trade and serve the public good in accordance with section 6(b)(5) of the Act[40] by helping to create a more efficient marketplace.

Rule 154, Commentary .14—Orders Left With Specialist: Commentary .14 provides that a stop limit order to sell a round lot or odd lot, which has been elected but not executed before the ex-dividend date is treated the same as an open limited price order to sell and such orders are not to be reduced by the specialist or odd-lot dealer on ex-date unless otherwise instructed. The Exchange states that such commentary is valid as it applies to cash dividends, but is inappropriate where other than cash dividends are involved. The Exchange also states that such orders, pursuant to Rule 132 (price adjustment of open orders on "ex-date"), are to be adjusted as are all other orders to reflect stock dividends or stock distributions. The Amex, therefore, proposes to amend this commentary to state that such orders are not to be reduced by the specialist or odd-lot dealer for a cash dividend but will be adjusted for stock dividends and stock distributions on ex-date in accordance with Rule 132 unless otherwise instructed.

The Commission believes that this amendment is a logical "housekeeping" amendment which should be approved as it promotes just and equitable principles of trade pursuant to Section 6(b)(5) of the Act.

Rule 155—Precedence Accorded to Orders Entrusted to Specialists: This rule requires that a specialist give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which the specialist has an interest. The Exchange states that since Exchange Act Rule 11a1–1 became effective, the aforementioned requirement is not universal and therefore several exemptions apply. The specialist is not required to refrain from trading for his own account when in possession of inexecutable "G" orders. Also, the Rule 155 requirements do not apply to on-floor orders subject to the "two-tick" restriction and unelected percentage orders. The Amex proposes that this rule be amended to state that the general requirement that a specialist yield precedence under Rule 155 does not apply in these three situations.

The Commission believes that the amendment to Rule 155 should be approved because it will conform Exchange Rules to Exchange Act Rule 11a1–1 and clarify the application of Rule 155, thereby promoting just and equitable principles of trade pursuant to Section 6(b)(5) of the Act.[41]

Rule 156—Representation of Orders: Currently, Rule 156 sets forth a broker's responsibility for the handling of "market," "limited price," "at the close" and "not held" orders. The Amex proposes that this rule be amended (by adding paragraph (e)) to include a broker's responsibility for the handling of "switch orders" and to provide that a broker may handle a "switch order" on a "best efforts" basis. The Exchange states that this proposal recognizes the difficulties a member may encounter in executing this type of order since it requires the execution of orders in different securities at the same time at a designated price difference.

The Commission believes that this amendment to Rule 156 should be approved because "switch orders" are appropriately defined under the category of "representation of orders," and because allowing "switch orders" to be handled on a "best efforts" basis reflects current market realities, thereby helping to ensure efficient execution of securities transactions pursuant to section 11A(a)(1) of the Act. The NYSE has similarly revised its comparable rule.[42]

Rule 950(c)—Floor Rules Applicable to Options—Rules of General Applicability: This paragraph provides that, with certain exceptions, the restrictions on Registered Traders as imposed by Rule 111 will apply to the trading of options. The Amex proposes to extend the proposed amendment to Rule 111, to permit members while on the Floor to enter orders in a manner that permits them to be deemed "off-Floor" orders, to options trading. The Exchange states that because it has determined that there is no reason why the proposed revisions to Rule 111 should not be applicable to transactions in non-equity securities as well as equity securities, the Exchange proposes to revise Rule 950(c) accordingly.[43]

The Commission agrees that there is no reason to distinguish between options and equities with respect to "off-floor" orders. And, this equal treatment of equities and options will promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[44]

Rule 950(e)—Floor Rules Applicable to Options—Rules of General Applicability: This provision sets forth the types of orders, in addition to the orders in Rule 131, that apply to options transactions. The Amex proposes to add a commentary to Rule 950(e) to clarify that "at the opening" orders in options are executable in whole or in part at the opening rotation in the pertinent option and that any such order or the portion thereof not so executed is to be treated as cancelled.

The Commission believes that the addition of Commentary .01 to Rule 950(e) is appropriate as it will clarify the manner in which "at the opening" orders in options are executable. This change will therefore serve to promote just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[45]

Rule 950(h), Commentary .05—Floor Rules Applicable to Options—Rules of General Applicability: Paragraph (h) of Rule 950 makes the specialist financial requirements contained in Rule 171 applicable to options trading.

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[38] Rule 154, Commentaries .08 through .13 will be renumbered as provided in the Exchange's proposal.

[39] See Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1991) (File No. SR–NYSE–89–02).

[40] See *supra* footnote 12.

[41] See *supra* footnote 12.

[42] The Amex states that the proposed amendment is based on NYSE Rule 13.

[43] The Amex originally proposed to revise Rule 111 to apply only to equity trading. The Amex, in amendment No. 1 to the rule filing, proposed to provide that, with certain exceptions, Rule 111 and its commentaries should apply to options transactions.

[44] See *supra* footnote 12.

[45] See *supra* footnote 12.

Commentary .05 to Rule 950(h), which details how the financial requirements are computed for options specialists, requires an option specialist to maintain twenty option contracts for each class of options in which he or she is registered. Rule 171, however, was revised several years ago to require specialists to "maintain a cash or liquid asset position in the amount of $600,000 or an amount sufficient to assume a position of sixty trading units of each security in which such specialist is registered * * *."[46] That rule previously required specialists to assume a position of twenty trading units. The Exchange states that, because Rule 171 now refers to sixty rather than twenty trading units, Commentary .05 should be amended accordingly. The Amex, therefore, proposes to amend Commentary .05 to require that a specialist maintain sixty options contracts of each class of options in which he or she is registered.[47]

The Commission believes that the change to Rule 950(h) is necessary in order to conform this rule with previous changes to Rule 171 thereby promoting just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[48]

Rule 959—Accommodation Transactions. This rule provides a "cabinet" trading facility for the trading of options which are out of the money to the extent that there is no buying interest at the minimum price at which options trade (1/16 of $1 or $.06–1/2 per underlying share). Orders to sell at $1 per contract ($.01 per underlying share) may be entered in the cabinet subject to a number of restrictions, including the requirement that only closing orders may be entered in the "cabinet." Because the rule applies only to orders left in the "cabinet," opening orders may be crossed in the crowd. The Rule, however, does not provide for this type of transaction. The Amex therefore, proposes that the rule be amended to provide that opening or closing purchase and sell orders may be executed in the crowd in the absence of closing purchase or sale orders in the cabinet.

The Commission believe that this is an appropriate clarifying amendment to Rule 959.

III. Conclusion

The Commission has reviewed carefully the Exchange's proposed rule changes and concludes that, for the above stated reasons, the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the proposals developed by the Exchange appropriately balance the competing concerns of various Exchange constituencies in a manner consistent with just and equitable principles of trade. Given the dynamic nature of competitive forces shaping the national market system, the Commission strongly supports the Amex's efforts to review and update the structure of market trading regulation in order to maintain an efficient and meaningful regulatory program.

Accordingly, based upon the aforementioned factors, the Commission finds that the Exchange's proposed rule change updating its market regulation rules is consistent with sections 6(b)(5), 6(b)(8), 11(b), and 11A(a)(1) of the Act[49] and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[50] that the proposed rule change (File No. SR–Amex–92–10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1101 Filed 1–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25972]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 12, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 31, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70–8315)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its wholly owned non-utility subsidiary company, Energy Initiatives, Inc. ("EII") (collectively, "Applicants"), One Upper Pond Road, Parsippany, New Jersey 07074, have filed an application-declaration under sections 6, 7, 9, 10, 12(b), and 32 of the Act and Rules 45 and 53 thereunder.

The Commission issued a notice of the filing on January 7, 1994 (HCAR No. 25971) ("January 7th Notice"). In the January 7th notice, EII proposed to acquire a limited partnership interest for $11.5 million in a Canadian limited partnership ("Partnership") being formed to develop, construct, own and operate a 22.5 megawatt wood and oil fired cogeneration facility in Brooklyn, Nova Scotia, Canada ("Project"). Applicants anticipated that the Project would quality as an exempt wholesale generator as defined by section 32(a)(1) of the Act. EII proposed to secure its equity contribution to the Partnership through an irrevocable letter of credit for $11.5 million with GPU unconditionally guaranteeing EII's obligations. Alternatively, should the Partnership elect to borrow $11.5 million from lending institutions to provide a portion of the construction financing, GPU proposed to guarantee unconditionally EII's repayment obligations.

Applicants now propose that GPU make a capital contribution to EII of up to $11.5 million. EII proposes to use such funds to acquire its interest in the Partnership.

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[46] See Securities Exchange Act Release No. 25863 (June 28, 1988), 53 FR 25225 (July 5, 1988) (File No. SR–Amex–88–14).

[47] The Amex also proposes to renumber Commentary .05 to .01 as it is the only commentary under Rule 950(h).

[48] See *supra* footnote 12.

[49] 15 U.S.C. 78f(b)(5), 78f(b)(8), 78k(b), and 78k-1(a)(1) (1988).

[50] 15 U.S.C. 78s(b)(2) (1988).

[51] See 17 CFR 200.30–3(a)(12) (1990).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1184 Filed 1–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20011; No. 811–4590]

Zero Coupon Bond Fund

January 11, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Zero Coupon Bond Fund.

RELEVANT 1940 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 as defined by the 1940 Act.

FILING DATE: The application was filed on June 15, 1993 and amended on December 23, 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 February 7, 1994, and should be accompanied by proof of service on Applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 82 Devonshire Street F5E, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney (202) 272–3045, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On February 21, 1986, Applicant filed a notification of registration on Form N–8A and a registration statement on Form N–1A which was declared effective on December 23, 1987.

2. Applicant has three investment Portfolios, each of which serves as the underlying investment medium for five insurance company separate accounts that are registered under the 1940 Act as unit investment trusts. The insurance companies and separate accounts are: Ameritas Variable Life Insurance Company (AVLIC Separate Account); Fidelity Investments Life Insurance Company (The Fidelity Investments Variable Life Account I); Midland National Life Insurance Company (Midland National Life Separate Account A); Monarch Life Insurance Company (The Fidelity Variable Account); and Vermont Variable Life Insurance Company (Vermont Variable Life Insurance Account).

3. On December 29, 1992, pursuant to an application submitted on behalf of each insurance company and separate account named in paragraph 2, the Commission granted an order permitting the substitution of shares of two other investment companies for the shares of Applicant. On December 30, 1992, each insurance company, on behalf of its separate account, redeemed every share it held in each Portfolio of Applicant at net asset value. On December 31, 1992, Applicant's investment adviser, Fidelity Management & Research Company ("FMR Co."), redeemed its shares of each Portfolio of Applicant at net asset value. Together these constituted all the outstanding shares of Applicant. Each Portfolio's securities consisted solely of zero coupon bonds which were sold on the open market at market value. On January 14, 1993, Applicant's Board of Trustees adopted a resolution directing that Applicant be deregistered under the 1940 Act.

4. Applicant currently has no assets, has no security holders or shares outstanding, and is in the process of winding up its affairs.

5. Applicant has not sold its assets or securities to another investment company, nor transferred its assets to any other trust, nor has it or will it merge into or consolidate with another registered investment company.

6. Applicant is not a party to any litigation or administrative proceedings.

7. Applicant has no debts. There were no expenses incurred in connection with the liquidation. Any expenses involved in the dissolution of Applicant as a Massachusetts business trust will be borne by FMR Corp, the parent company or Applicant's investment adviser, FMR Co.

8. Applicant represents that if the order sought herein is granted, it will shortly thereafter file with the Massachusetts Secretary of Commonwealth the documents necessary to dissolve itself as a Massachusetts business trust, thereby ceasing to exist as a legal entity.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1068 Filed 1–14–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2690; Amdt. 1]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective November 19, 1993, to expand the incident type for this disaster to include damage resulting from soil erosion, landslides, flooding, and mudslides. Accordingly, effective December 22, the filing deadline of December 27, 1993 for applications for physical damage as a result of this disaster has been extended another 60 days to February 25, 1994.

All other information remains the same, i.e., the termination date for filing applications for economic injury is July 28, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 29, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–1055 Filed 1–14–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2696]

California; Declaration of Disaster Loan Area

San Francisco County and the contiguous counties of Alameda, Marin, and San Mateo in the State of California constitute a disaster area as a result of damages caused by a fire which occurred on November 30, 1993 in the 700 block of Haight Street in San Francisco. Applications for loans for physical damage may be filed until the close of business on March 3, 1994, and for economic injury until the close of business on September 30, 1994 at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795,

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.250
Homeowners without Credit Available Elsewhere	3.625
Businesses with Credit Available Elsewhere	7.900
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 269605 and for economic injury the number is 814600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 30, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–1058 Filed 1–14–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2694; Amdt. 1]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective December 16, 1993, to include Butler, Crawford, Dent, Franklin, Perry, Stoddard, Texas, and Washington Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred November 13–19, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Dunklin, Gasconade, Laclede, New Madrid, Phelps, Pulaski, Warren, and Wright Counties in Missouri, and Jackson and Randolph Counties in Illinois.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 31, 1994, and for economic injury the deadline is September 1, 1994.

The economic injury numbers are 813300 for Missouri and 813500 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 29, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–1057 Filed 1–14–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2695]

Commonwealth of Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 22, 1993, I find that the City of Petersburg, Virginia constitutes a disaster area as a result of damages caused by tornadoes and severe storms which occurred on August 6, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 31, 1994 and for economic injury until the close of business on September 22, 1994 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd floor, Niagara Falls, NY 14303,

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chesterfield, Dinwiddie, and Prince George, and the Independent City of Colonial Heights, may be filed until the specified date at the previously designated 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
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 269512 and for economic injury the number is 814500.

This declaration supersedes Disaster Declaration #2678 dated September 10, 1993, for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 30, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–1056 Filed 1–14–94; 8:45 am]

BILLING CODE 8025–01–M

Microloan Demonstration Program

AGENCY: Small Business Administration (SBA).

ACTION: Notice of request for proposals, availability and filing deadlines.

SUMMARY: Section 7(m) of the Small Business Act, 15 U.S.C. 636(m), authorizes the SBA to conduct a Microloan Demonstration Program (Program). SBA issued regulations which may be found in Title 13, Code of Federal Regulations, Sections 122.61—122.61–12. This notice announces the availability of a Request for Proposals for entities seeking to participate in the Program as intermediary lenders and located in the jurisdictions of Delaware, Hawaii, Nevada, Tennessee, Virginia, Wyoming. The deadline for such receipt of such proposals is March 14, 1994.

DATES: Request for Proposal Packages will be available beginning January 31, 1994.

ADDRESSES: Request for Proposal Packages may be obtained by written request submitted to U.S. Small Business Administration, Office of Financing, Microloan Demonstration Program, 409 Third Street, SW., 8th Floor, Washington, DC 20416, Attn: Microloan Proposals, Mail Code 6120 or by telephone at (202) 205–6490.

SUPPLEMENTARY INFORMATION: Section 7(m) of the Small Business Act authorizes SBA to conduct a Microloan Demonstration Program. The purpose of the Program is to provide assistance to women, low-income, and minority entrepreneurs, and business owners, and other such individuals possessing the capability to operate successful business concerns and to assist small business concerns in those areas suffering from a lack of credit due to economic downturn. Under the Program, SBA is authorized to make direct loans to qualified intermediary lenders who will use the proceeds to make short-term, fixed rate microloans, of not more than $25,000, but particularly in amounts averaging $7,500, to start-up, newly established

and growing small business concerns. In conjunction with the loans made to intermediary lenders, SBA may make grants to such intermediary lenders to be used to provide intensive marketing, management and technical assistance to microloan borrowers under this Program.

SBA will accept responses from entities located in the above jurisdictions which seek to be accepted into the Program as an intermediary. To be eligible, an organization, inter alia, must be: (a) A private, non-profit entity; or (b) a private, non-profit, community development corporation; or (c) a consortium of private, non-profit organizations or private, non-profit community development corporations; or (d) a quasi-governmental economic development entity, other than a State, county, municipal government or any agency thereof, only if: (1) No application is received from an otherwise eligible and qualified organization; or (2) the SBA, in its sole discretion, determines that the needs of a region or geographical area are not adequately served by an otherwise eligible and qualified organization which: (a) has submitted an application; or (b) has previously been admitted to participate as an intermediary. Further, an entity meeting one of the above descriptions must have, by itself, at least one year of experience making and servicing microloans to start-up, newly established, or growing small business concerns, and itself providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its microloan borrowers. In addition, each intermediary lender is eligible to receive grant funding to support the costs of providing such technical assistance in an amount of not more than twenty-five percent of the total outstanding balance of the loan made under this Program.

Those organizations located in the indicated jurisdictions and which believe themselves eligible and which wish to participate in the Program may obtain a Microloan Demonstration Program Request for Proposals Package by contacting SBA at the above set forth address. Completed proposals must be received by SBA no later than 4:00 p.m. Eastern Standard Time, March 14, 1994.

Dated: January 7, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–1054 Filed 1–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 1933]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Bureau of Administration, State.

ACTION: The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) provides for a diversity immigrant visa program. Form DSP–122, Supplemental Registration for the Diversity Immigrant Visa Program, is designed to elicit information necessary to ascertain the eligibility of an applicant under section 203(c) of the Act. The following summarizes the information collection proposal submitted to OMB:

Type of request—New.
Originating office—Bureau of Consular Affairs.
Title of information collection—Supplemental Registration for the Diversity Immigrant Visa Program.
Form No.—DSP–122.
Frequency—Annually.
Respondents—Alien applicants for the diversity immigrant visa program.
Estimated number of respondents—1,000,000.
Average hours per response—30 minutes.
Total estimated burden hours—50,000.

Public notice 1925, Proposed Rule for 22 CFR 42.33 implementing section 203(c) of the Immigration and Nationality Act will be published in the **Federal Register.**

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: December 22, 1993.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94–1112 Filed 1–14–94; 8:45 am]

BILLING CODE 4710–24–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 15 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1994 meetings are scheduled as follows:

1. February 1, 9 a.m. to 1 p.m., Baltimore, Md., Region 2 Advisory Board.
2. February 2, 9 a.m. to 1 p.m., New Haven, Conn., Region 1 Advisory Board.
3. February 15, 9 a.m. to 1 p.m., Denver, Colo., Region 5 Advisory Board.
4. February 23, 9 a.m. to 1 p.m., Oklahoma City, Okla., Region 3 Advisory Board.
5. March 2, 9 a.m. to 1 p.m., San Francisco, Calif., Region 3 Advisory Board.
6. March 8, 9 a.m. to 1 p.m., New Orleans, La., Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Baltimore, Md.—Hyatt Regency Baltimore, 300 Light Street.
2. New Haven, Conn.—The Colony, 1157 Chapel Street.
3. Denver, Colo.—Hyatt Regency Denver, 1750 Welton Street.
4. Oklahoma City, Okla.—Metro Tech Conference Center, 1900 Springlake Drive.
5. San Francisco, Calif.—ANA San Francisco Hotel, 50 Third Street.
6. New Orleans, La.—The Monteleone Hotel, 214 Royal Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: Topics to be addressed at the six meetings will include: the impact of RTC property sales on local real estate market conditions; RTC's Small Investor Program; the status of Treasury Secretary Bentsen's RTC Management

Reforms, RTC's affordable housing disposition programs and the RTC's environmentally significant property disposition programs. In addition, the Boards will look at the opportunity for the RTC to work with community development banks in its disposition of assets and RTC's efforts in transferring assets to its nearest regional office for management and disposition. The Boards will hear from the vice presidents of each of RTC's regional offices as well as from witnesses testifying on specific agenda topics.

Statements: Interested persons may submit to an Advisory Board written statements, data, information, or views on the issues pending before the Board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: January 12, 1994.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 94–1130 Filed 1–14–94; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on February 1 and 2, 1994, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff on February 1, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On February 2, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on February 1 and will be open to the public. The remaining sessions on February 1 and the committee's reporting session on February 2 will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: January 11, 1994.

Frank N. Newman,

Under Secretary of the Treasury, Domestic Finance.

[FR Doc. 94–1087 Filed 1–14–94; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Public Meeting on Customs "Mod Act"

AGENCY: Customs Service, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a 2-day public meeting will be held in Hearing Room B of the Interstate Commerce Commission in Washington, DC, commencing at 10 a.m. on Wednesday, February 9, 1994. The purpose of this meeting is to provide the public with a general briefing and invite informal discussion covering a variety of Customs modernization opportunities and requirements provided for under Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). Because of the limitations on available seating, those planning to attend are requested to notify Customs in advance.

DATES: February 9, 1994, from 10 a.m. to 5 p.m. and February 10, 1994, from 9 a.m. to 4 p.m.

ADDRESSES: Interstate Commerce Commission Building, Hearing Room B, 12th Street & Constitution Avenue, NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Dale Snell, "Mod Act" Task Force, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Phone: (202) 482–6990; FAX: (202) 482–6994.

SUPPLEMENTARY INFORMATION: On December 8, 1993, the President signed the "North American Free Trade Agreement Implementation Act." The Customs modernization portion of this Act (Title VI of Pub. L. 103–182), popularly known as the Customs Modernization Act or "Mod Act," became effective when it was signed. To provide the public with a general "Mod Act" briefing and invite informal dialogue relative to implementation plans and issues, Customs will hold an open meeting in Washington on February 9–10, 1994. Among the topics to be discussed at the meeting will be remote location filing, periodic processing (including Importer Activity Summary Statements and reconciliation), recordkeeping, regulatory audit procedures, and informed compliance.

Because seating is limited, reservations will be required. Persons planning to attend are requested to notify Mr. Dale Snell by FAX at 202–482–6994 or by phone at 202–482–6990. Should demand for seats exceed capacity, Customs will schedule and hold a second meeting with an identical agenda.

Dated: January 10, 1994.

John Durant,

Director, "Mod Act" Task Force.

[FR Doc. 94–1136 Filed 1–14–94; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 11
Tuesday, January 18, 1994

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).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Wednesday, January 19, 1994.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, January 19, 1994, which is scheduled to commence at 9 a.m., in room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Transport Rate Structure and Pricing (CC Docket No. 91–213). Summary: The Commission will consider adoption of a *Second Report and Order* regarding transport pricing.

2—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* initiating the fourth year comprehensive review of the performance of local exchange carriers under price cap regulation.

3—Common Carrier—Title: Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Frequency Bands (CC Docket No. 92–166). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the establishment of a mobile-satellite service in the 1610–1626.5/2483.5–2500 MHz frequency bands.

4—Common Carrier—Title: Amendment of Parts 1 and 21 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service (CC Docket No. 92–297, RMs–7872 and 7722). Summary: The Commission will consider adoption of a *Second Notice of Proposed Rulemaking* regarding proposals to redesignate the 27.5–29.5 GHz frequency band from the Point-to-Point Microwave Radio Service to a point-to-multipoint service, and regarding fixed satellite use of the band.

Note: The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–1193 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Wednesday, January 19, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, January 19

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Amendments to 10 CFR Part 55 on Renewal of Licenses and Requalification Requirements for Licensed Operators (Contact: Anthony DiPalo, 301–492–3784 or Frank Collins, 301–504–3173)

b. Proposed Export of Fort St. Vrain Unirradiated HEU Fuel Assemblies to France for Recovery and Down-Blending to LEU (XSNMO2748) (Tentative) (Contact: Betty Wright, 301–504–2342)

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.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 12, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–1216 Filed 1–13–94; 10:59 am]

BILLING CODE 7590–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1463]

TIME AND DATE: 10 a.m., Wednesday, January 19, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on November 17, 1993.

Action Items

New Business

C—Energy

C1. One-year Coal and Transportation Contracts for Shawnee Fossil Plant.

E—Real Property Transactions

E1. Public Auction Sale of a Portion of Pine Tree Branch Experimental Watershed Affecting Approximately 3.2 Acres of Land in Henderson County, Tennessee.

E2. Sale of Three Noncommercial, Nonexclusive Permanent Easements Affecting Approximately 0.38 Acre of Land on Tellico Lake for Recreational Water-Use Facilities.

E3. Sale of a 10-Year Term Easement Affecting Approximately 0.49 Acre of Land on TVA's Bowling Green Microwave Repeater Site Property in Warren County, Kentucky, for a Cellular Telephone Transmitting Site.

E4. Sale of Permanent Easement Affecting 0.01 Acre of TVA's West Point Customer Service Center Property to the Mississippi Department of Transportation for a Highway Improvement Project in Clay County, Mississippi.

F—Unclassified

F1. Filing of a Condemnation Case.

F2. Supplement to Contract No. TV–91100V with CDI Power Systems Group, Incorporated, for work at Browns Ferry Nuclear Plant, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F3. Contract with PRC Engineering Systems, Incorporated, for work at Browns Ferry Nuclear Plant, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F4. Supplement to Personal Services Contract No. TV–86070V with Pellissippi State Technical Community College.

Information Items

1. Supplement No. 5 to Contract No. TV–86567V with United Energy Services Corporation—Watts Bar Nuclear Plant.

2. New Investment Management Agreements—Tennessee Valley Authority Retirement System.

3. Grant of 15-Year Easement to BellSouth Mobility Inc. in Davidson County, Tennessee.

4. Abandonment of a Portion of TVA's Great Falls-Estill Springs Transmission Line Right-of-Way Easement in Warren County, Tennessee.

5. Revision to Testing and Restart Program.

6. Recommendations Resulting from the 58th Annual Wage Conference for Project Agreement Wage Rates.

7. Recommendations Resulting from the 58th Annual Wage Conference for Annual Trades and Labor Employees.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: January 12, 1994.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 94–1225 Filed 1–13–94; 11:55 am]

BILLING CODE 8120–08–M

Corrections

Federal Register

Vol. 59, No. 11

Tuesday, January 18, 1994

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

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 92-140-1]

Brucellosis in Cattle; State and Area Classifications

Correction

FR Doc. 93-948 was published on page 4360 in the issue of Thursday, January 14, 1993. This document was an interim rule changing the brucellosis classification of the state of Oregon. It was published in the Proposed Rule section of the **Federal Register**. It should have appeared in the Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235-3335; I.D. 120993A]

Pacific Halibut Fisheries

Correction

In proposed rule document 93-31273 beginning on page 67762 in the issue of Wednesday, December 22, 1993, make the following corrections:

1. On page 67762, in the first column, in the **SUMMARY**, in the first line, "proposed" should read "proposes".

2. On the same page, in the 3d column, in the 4th complete paragraph, in the 10th line, after "that" insert "were".

3. On page 67763, in the second column, in the eighth line from the end, "review" should read "reviewed".

4. On the same page, in the third column, in the last complete paragraph, in the eighth line from the end, "48°34′44″ N." should read "48°35′44″ N.".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT-9-1-6153; RI-5-1-6152; A-1-FRL-4807-4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut and Rhode Island; Stage II Vapor Recovery

Correction

In rule document 93-30776 beginning on page 65930 in the issue of Friday, December 17, 1993, make the following correction:

1. On page 65931, in the 3d column, in the 10th line, "10,000" should read "100,000".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-02-7123-55-6251; CACA 29583]

Realty Action; Termination of Classifications and Disposal of Public Land in Shasta, Butte, and Trinity Counties, CA

Correction

In document 93-30755 beginning on page 66011 in the issue of Friday, December 17, 1993, on page 66011, in the third column, in the land description for "M.D.M., Trinity County," in the first line "T. 33 N., R.9 E." should read "T. 33 N., R. 9 W."

BILLING CODE 1505-01-D

federal register

Tuesday
January 18, 1994

Part II

Environmental Protection Agency

Sediment Quality Criteria; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–4827–2]

Sediment Quality Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability and Request for Comment on Sediment Quality Criteria and Support Documents.

SUMMARY: Pursuant to section 304(a)(1) of the Clean Water Act, the U.S. Environmental Protection Agency (EPA) has developed, and is requesting public comments on, documents presenting proposed Sediment Quality Criteria for the Protection of Benthic Organisms for five priority pollutant (section 307(a)) chemicals, guidelines for deriving these criteria on a site-specific basis, and the technical basis for deriving the criteria. The criteria documents present data and criteria for acenaphthene, dieldrin, endrin, fluoranthene and phenanthrene, which were selected for their known toxicity, hydrophobicity, and persistence. EPA intends to publish each of the documents in final form after considering public comments, while the general regulatory role Sediment Quality Criteria play will be outlined in the Contaminated Sediment Management Strategy (CSMS) which will be available for public comment in the near future. The Agency is specifically soliciting comments on the scientific soundness of the criteria development methodology and the criteria themselves as opposed to their application. Comments received in response to this notice on the intended uses and implementation of the criteria will be taken into account in preparing the proposed CSMS and other guidance materials. An exception to this is the potential for the Sediment Quality Criteria to be used as Applicable and Relevant or Appropriate Requirements (ARARs) under CERCLA. The EPA particularly welcomes comment and discussion on the applicability and appropriateness of using the criteria as ARARs.

DATES: Written comments must be postmarked or submitted by hand on or before April 18, 1994.

ADDRESSES: Comments may be mailed or delivered to: Sediment Quality Clerk, Water Docket MC–4101, Environmental Protection Agency, 401 M Street SW., room L102 Washington, DC 20460. Commenters are requested to submit any references cited in their comments. Commenters are also requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Mary C. Reiley, Sediment Quality Criteria Program, Office of Science and Technology, Mail Code 4304, 401 M Street SW., Washington, DC 20460, phone: 202–260–0658.

SUPPLEMENTARY INFORMATION:

I. Availability of Documents

This notice announces the availability for public review and comment of draft documents proposing sediment quality criteria for the protection of benthic organisms for five priority pollutant chemicals, the methodology used to derive the criteria, and guidelines for modifying the criteria on a site-specific basis. The seven documents for which public comment is requested are:

- Sediment Quality Criteria for the Protection of Benthic Organisms: ACENAPHTHENE (EPA–822–R–93–013)
- Sediment Quality Criteria for the Protection of Benthic Organisms: DIELDRIN (EPA–822–R–93–015)
- Sediment Quality Criteria for the Protection of Benthic Organisms: ENDRIN (EPA–822–R–93–016)
- Sediment Quality Criteria for the Protection of Benthic Organisms: FLUORANTHENE (EPA–822–R–93–012)
- Sediment Quality Criteria for the Protection of Benthic Organisms: PHENANTHRENE (EPA–822–R–93–014)
- Technical Basis for Deriving Sediment Quality Criteria for Nonionic Organic Contaminants for the Protection of Benthic Organisms by Using Equilibrium Partitioning (EPA–822–R–93–011)
- Guidelines for Deriving Site-Specific Sediment Quality Criteria for the Protection of Benthic Organisms (EPA–822–R–93–017)

Copies of the draft documents may be obtained upon request from the Office of Water Resource Center (202) 260–7786. These documents are also available for public inspection and copying during normal business hours at the Water Docket Room L–102 (basement) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. Copies of these documents are also available for review in the EPA Regional office libraries. For the Regional Office library in your area contact: EPA Library, (202) 260–3944. EPA's response to public comment will be available upon request from the Office of Water Resource Center (202) 260–7786. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

II. Background Information

Toxic contaminants in bottom sediments of the nation's lakes, rivers, wetlands, and coastal waters create the potential for continued environmental impact even where water column contaminant levels comply with established water quality criteria. In addition, contaminated sediments can have impacts on water quality even when additional pollutants are no longer being added by any other source. It is intended that sediment quality criteria be protective of benthic organisms and be used to: assess the extent of sediment contamination, aid in implementing measures that limit or prevent additional contamination, and identify when appropriate remediation activities are needed.

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 314(a)(1)), directs EPA to develop and publish criteria reflecting the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, wildlife and recreation. EPA has periodically issued ambinent water quality criteria guidance, beginning with the publication of "Water Quality Criteria 1972." All criteria guidance through late 1986 was summarized in an EPA document entitled "Quality Criteria for Water, 1986." EPA has subsequently published, from time to time, new ambient water quality criteria guidance for additional pollutants or revised existing criteria guidance.

EPA's criteria documents are intended to provide a comprehensive toxicological evaluation of each chemical addressed therein, based on available information. For toxic pollutants, the documents tabulate the numeric acute and chronic toxicity information for aquatic life and, where sufficient information is available, derive the numeric criteria maximum concentrations (acute criteria) and the numeric criteria continuous concentrations (chronic criteria) that the Agency recommends to protect aquatic life resources. The documents also provide recommended criteria to protect human health. EPA has published numeric aquatic life criteria for 30 priority pollutants and human health criteria for 91 priority pollutants. Aquatic life criteria address potential water column impacts only.

EPA is now proposing sediment quality criteria for five priority pollutant chemicals (endrin, dieldrin, fluoranthene, phenanthrene, and acenaphthene) that EPA has determined are present in the sediment of the Nation's waters and cause or have the potential to cause adverse effects to the water column and benthic assemblages and their hierarchical foodchains including humans. Pursuant to section 104 of the Clean Water Act, the Agency has conducted research, experiments and demonstrations and has studied the effects of contaminated sediment on freshwater, marine, and estuarine aquatic life. EPA used this information to develop the criteria proposed today, which represent EPA's first effort to develop sediment quality criteria. These five chemicals were selected because of their known toxicity, hydrophobicity, and persistence.

EPA developed these proposed sediment quality criteria using a methodology called the Equilibrium Partitioning Approach which was selected after considering a variety of approaches that could be used to assess sediment contamination. Technical reviews of the methodology and supporting science was conducted by the EPA Science Advisory Board (SAB) in February 1989 and June 1992. Data collected in support of the ambient aquatic life water quality criteria or an equivalent data base were also used to derive the proposed sediment quality criteria. Sediment criteria concentrations are expressed as micrograms chemical per gram organic carbon and apply to sediments with ≥ 0.2% organic carbon; below this the criteria should not be applied because of significant scientific uncertainty associated with extrapolating to sediments with < 0.2% organic carbon.

III. Possible Uses of Sediment Quality Criteria

The main purpose of this notice is to seek comment on the scientific and technical merit of the criteria and methodology. To place the criteria in context, this section discusses potential uses of the criteria.

EPA is in the process of identifying and evaluating a range of possible uses to which final sediment quality criteria may be applied. For example, EPA is considering whether to use these criteria as a basis for water quality assessment reports under section 305(b), as a basis for total maximum daily loads under section 303(d), and water quality-based effluent limits in National Pollutant Discharge Elimination System ("NPDES") permits under section 402, and/or as a possible standard in developing clean-up strategies under the Clean Water Act or other statutes. These and other possible uses are discussed below.

Section 305(b) requires the states to assess the quality of their navigable waters in terms of the extent to which they meet the goals of the Clean Water Act. EPA proposes to encourage states, during these assessments, to identify areas with sediment contamination.

Under section 303(c), states adopt water quality standards including criteria to protect designated uses. Final section 304(a) numeric sediment quality criteria guidance could be used by states in adopting State numeric sediment quality criteria designed to protect the public health or welfare, enhance the quality of water, and serve the purposes of the Act.

Sediment quality criteria could become a basis for total maximum daily loads under section 303(d) and water quality-based effluent limits in NPDES permits under section 402. (Their use in NPDES permits is discussed in detail below). Pursuant to section 303(d), states are required to identify and establish total maximum daily loads for water where existing pollution controls are not stringent enough to achieve applicable water quality standards. Under section 301(b)(1)(c), permit writers are required to impose in NPDES permits any more stringent limitations necessary to achieve water quality standards. If a state has adopted water quality standards based on sediment quality criteria, and if those standards are not being achieved, then TMDLs are required (unless existing controls will remedy the impairment) and appropriate effluent limits need to be included in NPDES permits. In addition, even if the states do not adopt numeric sediment criteria as part of state water quality standards, the EPA section 304(a) criteria could still be used by State and Federal permit writers as a starting point under 40 CFR 122.44(d)(1)(vi) to derive numeric water quality-based effluent limits as necessary to attain applicable narrative criteria (e.g., those that require receiving waters to be "free from" toxics). Indeed, many states, as part of their narrative criteria, have adopted prohibitions against objectionable sediment deposits. Similarly, the section 304(a) criteria could be used in state's TMDLs.

National Pollutant Discharge Elimination System Program

In EPA's 1987 report, An Overview of Sediment Quality in the United States, municipal sewage treatment plants and combined sewer overflows were cited as sources of sediment contamination in all regions of the country. Chemical, steel, metal working and electroplating industries were also mentioned as sources in many areas as were engine and automotive facilities, nuclear energy producers, paper mills, tanneries, refineries and other petroleum industries, electrical component and capacitor manufacturers, and wood preservers. The Agency is compiling a national inventory of point and nonpoint sources of sediment contamination to assist in targeting at risk sites and facilities.

In recognition of the role of contaminated sediments as a cause of impaired water quality, the NPDES permitting program is developing and field testing models predictive of the ambient quality of water and sediment. While existing water quality models may be quite helpful in understanding the sediment dynamics in specific waterbodies, they may be too complex to be routinely used by regulatory authorities to establish water quality-based effluent limits based on sediment quality criteria. The NPDES program is supporting development of a chemical-specific sediment quality criteria-based effluent limit methdology and is testing its application. The NPDES program also intends to develop guidance on the procedure. EPA hopes that such a method will be sufficiently sophisticated to be reliable and defensible, yet require minimal data points and scientific extrapolations so that it can be routinely applied in a regulatory context.

In addition to developing a sediment quality criteria-based permitting methodology, the NPDES program is supporting laboratory training, demonstrations, and guidance development on the assessment and control of bioconcentrating pollutants which, by nature, accumulate in sediments. It is also supporting development of acute and chronic sediment toxicity tests and sediment toxicity identification evaluations. The sediment quality criteria will advance all of these efforts by establishing a new tool for achieving the long-term goals of the Act.

Great Lakes Program

Sediment quality criteria could also be used in connection with the Great Lakes program. For example, the Great Lakes Water Quality Agreement provides that the United States and Canadian governments will cooperate with State and Provincial governments to ensure that Remedial Action Plans ("RAPs") are developed and implemented for specific Areas of Concern ("AOCs") in the Great Lakes.

The Great Lakes Water Agreement also calls for the establishment of compatible criteria between the two countries for the classification of sediment quality. Thus, EPA anticipates that Great Lake States and EPA Regions will use final sediment quality criteria for various purposes, including establishing priorities for sites needing further assessment, targeting areas for potential remediation and prevention efforts, and supporting the development of state water quality standards based on sediment quality criteria.

In each of the designated AOC's located in the United States contaminated sediments have been identified as causing at least one of the 14 beneficial use impairments listed in the Great Lakes Water Quality Agreement. The RAPs are to specify the beneficial uses that are impaired, the remedial measures needed to restore beneficial uses, and an implementation schedule. For those AOC's already identified most of the Stage 1 RAPs (problem identification) have already been completed and most Stage 2 RAPs (remedial actions) are in preparation, therefore, the proposed criteria will be most applicable for the identification of future AOC's and development of their Stage 1 and 2 RAPs.

The International Joint Commission (IJC) has published "listing/delisting criteria" for adding and removing a site from the AOC list. The listing/delisting criteria refer to various tools to measure the impacts on beneficial uses, including the contaminant levels in fish and wildlife, numerical water quality criteria for surface waters, and, in the case of restrictions on dredging activities, the extent to which sediment contamination may exceed standards, guidelines, or IJC objectives. The EPA will look to the Great Lakes States to review sediment quality data for each AOC in relation to the possible impairment of beneficial uses and to consider 304(a) sediment quality criteria and any other more recent data or relevant site specific data to design preventive and remedial actions for contaminated sediment. For example, EPA in cooperation with Great Lakes States and the Canadian Federal and Provincial Governments, may use the sediment quality criteria as one means to prioritize sites for action by comparing the toxic contaminant concentration in the sediments to the most stringent of either Canadian or U.S. standards or guidelines.

Superfund Program Uses

The SQC have been developed primarily to assist in pollution prevention and water quality control activities. Due to many factors, such as the potential for causing environmental damage through distrubing contaminated sediments, they are not intended as mandatory levels to be met in clean-up efforts. EPA recognizes that, in particular circumstances, it may be appropriate to use natural recovery as a sediment remediation tool. Superfund is primarily a remediation program concerned with the clean-up or remediation of sites that have been contaminated.

The Superfund program expects to use SQC as a tool to evaluate sites that may require assessment and possible remediation. For example, if a site has been shown to exceed SQC levels, it may be given higher priority for assessment with the Hazard Ranking System (HRS) to help determine if the site should be added to the National Priorities List (NPL). NPL sites typically require long term remediation efforts. In general, the Superfund program expects to employ SQC for sites with sediment contamination as part of a tiered testing protocol.

Given the above approach to the assessment of contaminated sediments, Superfund's approach is consistent with the conclusions of both the Science Advisory Board's November 1992 review of the criteria and the Agency: "The use of SQC's as stand-alone, pass-fail criteria is not recommended for all applications." and "* * * the inappropriate uses of the SQC's, such as mandatory target clean-up standards, [should be stated] unless additional site specific studies are completed." At the same time, SQC's might be considered water quality criteria as referenced in section 121(d)(2)(A) of CERCLA, and thus potential Applicable or Relevant and Appropriate Requirements (ARAR's). Similarly, if SQC are adopted by States as part of water quality standards, they could be considered as ARARs. The Agency requests comment on the appropriateness of the use of SQC as ARARs and if so what aspects of the remedial action they should affect.

RCRA Corrective Action

The Office of Solid Waste will include the 304(a) sediment quality criteria as assessment tools in RCRA Facility Investigations (RFI's) guidance. Currently the guidance warns about potential sediment quality problems but does not recommend specific tests to evaluate the ecological and human health risks posed by contaminated sediments.

Other Programs

A variety of other regulatory and nonregulatory programs are looking to sediment quality criteria as a benchmark for contaminated sediment evaluations. The dredging program (Sec. 404 of the CWA and 102 of MPRSA), which is jointly implemented by the Army Corps of Engineers and the EPA, may incorporate sediment quality criteria into Tier II of the dredged material management plan which is currently under development. Other examples of potential sediment quality criteria uses are to: (1) Proactively monitor to ensure uncontaminated sediments remain uncontaminated; (2) predict the need to arrest increasing contamination before harm occurs; (3) establish the spatial extent of contamination to determine the potential costs/benefits of clean-up and remediation efforts; and/or (4) identify sources of contamination via toxicity identification evaluation (TIE) protocols that link toxic contaminants to sources. In some cases, sediment criteria alone would be sufficient to identify and to establish goals for remediation or clean-up of contaminated sediment. In other cases the sediment criteria should be supplemented with biological sampling and testing and more extensive chemical monitoring before decisions are made.

Neither the Science Advisory Board nor the Agency believes the sediment quality criteria should be used as "pass/fail" criteria or mandatory clean-up levels for all programs. It is often more environmentally sound to allow clean sediments to cover contaminated sediments over time than to remove the sediments in question. The removal of contaminated sediments may in and of itself cause physical harm to bottom communities as well as cause resuspension and dispersion of the contaminant being removed. The costs of clean-up may also be prohibitive because of the level or areal extent of contamination and the disposal requirements for contaminated sediments. Therefore, EPA expects that the sediment quality criteria will be used in a tiered approach to evaluate the level and areal extent of sediment contamination and the risk associated with a variety of clean-up or remediation alternatives.

In combination, the above authorities provide a comprehensive mechanism for monitoring, assessing and researching the effects of pollutants on the Nation's waters and regulating the discharges in order to eliminate or limit their potential impacts on water quality. EPA also expects to publish, in the near future, an EPA Contaminated Sediment

Management Strategy, which will provide guidance on the application of the sediment quality criteria. Though not specifically requested at this time, comments received in connection with this notice that discuss implementation issues will be considered in the development of the draft strategy.

V. Description of Sediment Criteria Pollutants

Criteria pollutants were selected for their known toxicity, hydrophobicity, and persistence. The following section lists each chemical, its CAS number, sediment quality criteria value expressed as ug pollutant per gram of organic carbon within the sediment, and a brief description of the chemical, its potential sources and uses. The criteria documents themselves provide details on the range of uncertainty that surrounds the criteria values provided below.

Acenaphthene

(CAS No. 83–32–9)

Sediment Quality Criteria Value:
Freshwater: 130 $\mu g/g_{oc}$
Saltwater: 230 $\mu g/g_{oc}$

Dihydro-acenaphthylene or 1,8 ethylenenapthalene occurs in coal and is released during the high temperature carbonization or coking of coal. Acenaphthene is also used as a dye intermediate in the manufacture of plastics, insecticides and fungicides, and has been detected in cigarette smoke and gasoline condensates. It is a polycyclic aromatic hydrocarbon.

Dieldrin

(CAS No. 60–57–1)

Sediment Quality Criteria Value:
Freshwater: 11 $\mu g/g_{oc}$
Saltwater: 20 $\mu g/g_{oc}$

Prior to the cancellation of its registration (1974), dieldrin was one of the most widely used chlorinated hydrocarbon pesticides. Prior to its cancellation (1974), aldrin was used in greater quantity than dieldrin but quickly transforms into dieldrin in the environment. The chemicals were primarily used to control insect pests on corn and later on citrus fruits.

Endrin

(CAS No. 72–20–8)

Sediment Quality Criteria Value:
Freshwater: 4.2 $\mu g/g_{oc}$
Saltwater: 0.76 $\mu g/g_{oc}$

Endrin is a chlorinated hydrocarbon insecticide. Prior to its cancellation (1986) it was used in the agricultural chemical industry for the control of pests on fruits and vegetation.

Fluoranthene

(CAS No. 206–44–0)

Sediment Quality Criteria Value:
Freshwater: 620 $\mu g/g_{oc}$
Saltwater: 300 $\mu g/g_{oc}$

Fluoranthene, a polycyclic aromatic hydrocarbon, is a combustion product produced by the pyrolysis of organic raw materials, such as coal and petroleum at high temperature. It is ubiquitous in the environment.

Phenanthrene

(CAS No. 85–01–8)

Sediment Quality Criteria Value:
Freshwater: 180 $\mu g/g_{oc}$
Saltwater: 240 $\mu g/g_{oc}$

Phenanthrene is a polycyclic aromatic hydrocarbon, naturally present in coal and petroleum, and having some industrial uses. It is also formed as a combustion product.

V. Description of the Technical Basis for Deriving Numerical National Sediment Quality Criteria for Nonionic Organic Contaminants Using Equilibrium Partitioning

The Technical Basis for Deriving Sediment Quality Criteria for Nonionic Organic Contaminants for the Protection of Benthic Organisms by Using Equilibrium Partitioning presents the research performed and data collected in the development of the equilibrium partitioning approach to deriving sediment quality criteria. (See Section I entitled: "Availability of Documents".)

VI. Description of Guidelines for Deriving Site-Specific Sediment Quality Criteria for the Protection of Benthic Organisms

The Guidelines for Deriving Site-Specific Sediment Quality Criteria for the Protection of Benthic Organisms provides guidance on the methodology which is appropriate for modifying nationally applicable sediment quality criteria on a site-specific basis. The document details the procedures and data necessary to perform the modification that may be required because of unique sensitivities of site species or partitioning processes at the site. (See Section I entitled: "Availability of Documents".)

Request for Comments

EPA is soliciting comments on the scientific soundness of the criteria development methodology and the proposed criteria themselves. The sediment quality criteria, like the surface water quality criteria, are ambient criteria describing aquatic conditions which support designated uses. The merit and validity of these criteria must stand alone without regard to permit limit derivation, sediment remediation costs, etc. Specifically the Agency requests comment on the five sediment quality criteria documents described above, the document entitled "Technical Basis for Deriving Sediment Quality Criteria for Nonionic Organic Contaminants for the Protection of Benthic Organisms by Using Equilibrium Partitioning" and the "Guidelines for Deriving Site-Specific Sediment Quality Criteria for the Protection of Benthic Organisms". EPA is also interested in receiving comments on the following issues:

1. Site Specific Criteria Modifications

Under section 304(a) a state may develop its own water quality criteria on either a state-wide basis or on a site-specific basis to be protective of unique waters. EPA is considering the same approach for the developement of sediment quality criteria. Section 131.11(b)(1) of EPA's regulations allows states to modify 304(a) criteria to reflect site-specific conditions, when adopting water quality standards based on such criteria guidance and EPA is considering allowing similar site-specific modification for water quality standards based on EPA's sediment quality criteria guidance. Technical persons have identified a number of reasons both supporting and challenging the appropriateness of allowing site specific modifications to sediment criteria. EPA is particularly interested in receiving comments and ideas on site specific criteria modifications. A more detailed discussion of these issues can be found on this topic on page 99 of the Technical Basis document identified above.

2. Need for Separate Sediment Quality Criteria To Protect Fresh Water and Marine Species

For certain chemicals (acenaphthene, dieldrin, fluoranthene, and phenanthrene), statistical analysis of all the data used in the derivation of water quality criteria revealed no significant differences in the relative sensitivity of fresh water and marine species. Further, there are no known chemical or physical properties of the above chemicals that would support a difference in toxicity and bioavailability between aquatic environments. (These comparisons do not hold for endrin.) However, EPA customarily has developed separate criteria for saltwater and freshwater to avoid having the sensitivity of species in one aquatic environment drive environmental decisions and regulation in the other

environment. Although these sediment quality criteria are derived separately for freshwater and saltwater, EPA seeks comment on the appropriateness of a single sediment quality criteria applicable to both aquatic environments after first demonstrating equivalency of sensitivity (for these and future criteria).

Acenaphthene

Sediment Quality Criteria Value:
Freshwater: 130 $\mu g/g_{oc}$
Saltwater: 230 $\mu g/g_{oc}$
This difference is less than a factor of 2.

Dieldrin

Sediment Quality Criteria Value:
Freshwater: 11 $\mu g/g_{oc}$
Saltwater: 20 $\mu g/g_{oc}$
This difference is less than a factor of 2.

Fluoranthene

Sediment Quality Criteria Value:
Freshwater: 620 $\mu g/g_{oc}$
Saltwater: 300 $\mu g/g_{oc}$
This difference is less than a factor of 2.

Phenanthrene

Sediment Quality Criteria Value:
Freshwater: 180 $\mu g/g_{oc}$
Saltwater: 240 $\mu g/g_{oc}$
This difference is less than a factor of 2.

Endrin

Sediment Quality Criteria Value:
Freshwater: 4.2 $\mu g/g_{oc}$
Saltwater: 0.76 $\mu g/g_{oc}$

This difference is approximately a factor of 5 which is statistically significant and would require that endrin have both criteria values.

3. Level of Protection

Existing section 304(a) criteria are intended to protect a balanced and indigenous aquatic community by protecting most individuals within sensitive species. As a practical matter, the basic aquatic life procedure approximates the goal by deriving criteria to protect most individuals in the 95th percentile (most sensitive) of the tested genera. This is done by basing acute criteria on LC50 or similar tests, and dividing the final result by two to protect most individuals, as opposed to protecting only 50%. Less sensitive species are more fully protected, while more sensitive species are somewhat protected. There are exceptions procedures which override this basic approach where necessary to protect wildlife, plants, or commercially important aquatic species. See 50 FR 30784, July 29, 1985, for details. Tested species are selected to include a minimum data set of specified aquatic species. As such, tested species are considered to be surrogates for untested species. This same approach is currently proposed for benthic organisms via the sediment quality criteria. Comment is being sought on the appropriateness of this approach.

4. Use of SQC as ARAR's in the CERCLA Program

The availability of sediment quality criteria for adoption by States into State water quality standards provides for the potential requirement in those States that the SQC be used as ARAR's. As discussed earlier, EPA is concerned that this "mandatory clean-up level" may be an inappropriate use of the proposed criteria. The Agency requests comment on the use of SQC as ARAR's should they be adopted into State water quality standards.

5. Definition of Sediments to Which Sediment Quality Criteria Apply

The criteria documents define sediments to which SQC are applicable as those "permanently inundated with water, intertidal sediment and to sediments inundated periodically for durations sufficient to permit development of benthic assemblages." The criteria are not intended to apply to "sediments occasionally inundated so that they support terrestrial species." The Agency believes the appropriate uses of SQC are for those sediments that maintain, or have the potential to maintain if not contaminated, benthic aquatic assemblages. Comments that discuss a broader or narrower definition or that support the proposed definition are requested.

Dated: December 28, 1993.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 94–1133 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
January 18, 1994

Part III

Department of Education

34 CFR Part 644

Educational Opportunity Centers Program; Final Rule and Notice Inviting Applications

DEPARTMENT OF EDUCATION

34 CFR Part 644

RIN 1840–AB65

Educational Opportunity Centers

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Educational Opportunity Centers program. The Educational Opportunity Centers program is authorized under title IV of the Higher Education Act of 1965 (HEA), and these final regulations implement changes made to the HEA by the Higher Education Amendments of 1992. In addition to incorporating statutory changes, the regulations also clarify and simplify requirements governing the program and revise one funding criterion.

The purposes and allowable activities of the Educational Opportunity Centers program support the National Education Goals. Specifically, the program funds projects designed to improve the academic competency of program participants (Goal #3).

DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write to the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

Applicability: The criteria listed under § 644.22 will apply on and after June 1, 1994. Until June 1, 1994, the existing criteria will continue to apply.

FOR FURTHER INFORMATION CONTACT: Margaret A. Wingfield, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Washington, DC 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement the Higher Education Amendments of 1992 (Pub. L. 102–325, enacted July 23, 1992). The Educational Opportunity Centers program provides grants to institutions of higher education; public and private agencies and organizations; combinations of institutions, agencies, and organizations; and secondary schools under special circumstances. The purposes of the program are to (1) provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education; and (2) assist individuals in applying for admission to institutions that offer programs of postsecondary education, including preparing necessary applications for use by admissions and financial aid officers.

On October 26, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 57704). The NPRM included a summary of regulations proposed to implement statutory changes and other regulations proposed to clarify and simplify requirements governing the program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 45 persons submitted comments on the proposed regulations. An analysis of the comments and the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major Changes in the Regulations

The major differences between the NPRM and these final regulations are as follows:

1. Section 644.21 (Selection Criteria—Plan of Operation)

The criterion listed under § 644.21(c)(5) has been modified to encourage applicants to include information about their plan to coordinate with other projects for disadvantaged students.

2. Section 644.30 (Allowable Costs)

Section 644.30 has been revised to include, as allowable costs, transportation, lodging, and meals for project participants and staff during visits to postsecondary institutions or for participation in "College Day" and career awareness activities. Also, fees for college admissions applications and college entrance examination fees are now permissible under certain circumstances.

3. Section 644.31 (Unallowable Costs)

This section has been revised to conform to the changes made in the allowable costs section.

4. Section 644.32 (Recordkeeping)

The language in § 644.32(d)(1) has been modified to lessen the recordkeeping burden on grantees.

Intergovernmental Review

This program is subject to the requirement 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.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 644

Colleges and Universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Secondary education.

(Catalog of Federal Domestic Assistance Number 84.066 Educational Opportunity Centers Program.)

Dated: January 10, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary revises part 644 of title 34 of the Code of Federal Regulations to read as follows:

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

Subpart A—General

Sec.

644.1 What is the Educational Opportunity Centers program?
644.2 Who is eligible for a grant?
644.3 Who is eligible to participate in a project?
644.4 What services may a project provide?
644.5 How long is a project period?
644.6 What regulations apply?
644.7 What definitions apply?

Subpart B—Assurances

644.10 What assurances must an applicant submit?

Subpart C—How Does the Secretary Make a Grant?

644.20 How does the Secretary decide which new grants to make?
644.21 What selection criteria does the Secretary use?

644.22 How does the Secretary evaluate prior experience?
644.23 How does the Secretary set the amount of a grant?

Subpart D—What Conditions Must Be Met by a Grantee?

644.30 What are allowable costs?
644.31 What are unallowable costs?
644.32 What other requirements must a grantee meet?

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

Subpart A—General

§ 644.1 What is the Educational Opportunity Centers program?

The Educational Opportunity Centers program provides grants for projects designed to provide—

(a) Information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education; and

(b) Assistance to individuals in applying for admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary applications for use by admissions and financial aid officers.

(Authority: 20 U.S.C. 1070a–16)

§ 644.2 Who is eligible for a grant?

The following are eligible for a grant to carry out an Educational Opportunity Centers project:

(a) An institution of higher education.

(b) A public or private agency or organization.

(c) A combination of the types of institutions, agencies, and organizations described in paragraphs (a) and (b) of this section.

(d) A secondary school, under exceptional circumstances such as if no institution, agency, or organization described in paragraphs (a) and (b) of this section is capable of carrying out an Educational Opportunity Centers project in the target area to be served by the proposed project.

(Authority: 20 U.S.C. 1070a–11)

§ 644.3 Who is eligible to participate in a project?

(a) An individual is eligible to participate in an Educational Opportunity Centers project if the individual meets all of the following requirements:

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident;

(iv) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau); or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

(2)(i) Is at least 19 years of age; or

(ii) Is less than 19 years of age, and the individual cannot be appropriately served by a Talent Search project under 34 CFR part 643, and the individual's participation would not dilute the Educational Opportunity Centers project's services to individuals described in paragraph (a)(2)(i) of this section.

(3) Expresses a desire to enroll, or is enrolled, in a program of postsecondary education, and requests information or assistance in applying for admission to, or financial aid for, such a program.

(b) A veteran as defined in § 644.7(b), regardless of age, is eligible to participate in an Educational Opportunity Centers project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the age requirement in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.4 What services may a project provide?

An Educational Opportunity Centers project may provide the following services:

(a) Public information campaigns designed to inform the community about opportunities for postsecondary education and training.

(b) Academic advice and assistance in course selection.

(c) Assistance in completing college admission and financial aid applications.

(d) Assistance in preparing for college entrance examinations.

(e) Guidance on secondary school reentry or entry to a General Educational Development (GED) program or other alternative education program for secondary school dropouts.

(f) Personal counseling.

(g) Tutorial services.

(h) Career workshops and counseling.

(i) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of these persons.

(j) Activities described in paragraphs (a) through (i) of this section that are specifically designed for students of limited English proficiency.

(k) Other activities designed to meet the purposes of the Educational Opportunity Centers program stated in § 644.1.

(Authority: 20 U.S.C. 1070a–16)

§ 644.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Educational Opportunity Centers program is four years.

(b) The Secretary approves a project period of five years for applications that score in the highest ten percent of all applications approved for new grants under the criteria in § 644.21.

(Authority: 20 U.S.C. 1070a–11)

§ 644.6 What regulations apply?

The following regulations apply to the Educational Opportunity Centers 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), except for § 75.511.

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations), except for the definition of "secondary school" in § 77.1.

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 644.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Budget period
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Private
Project
Project period
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Participant means an individual who—

(i) Is determined to be eligible to participate in the project under § 644.3; and

(ii) Receives project services.

Postsecondary education means education beyond the secondary school level.

Potential first-generation college student means—

(i) An individual neither of whose parents received a baccalaureate degree; or

(ii) An individual who regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree.

Secondary school means a school that provides secondary education as determined under State law, except that it does not include education beyond grade 12.

Target area means a geographic area served by an Educational Opportunity Centers project.

Veteran means a person who served on active duty as a member of the Armed Forces of the United States—

(i) For a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable; or

(ii) After January 31, 1955, and who was discharged or released from active duty because of a service-connected disability.

(Authority: 20 U.S.C. 1070a–11, 1070a–16, and 1141)

Subpart B—Assurances

§ 644.10 What assurances must an applicant submit?

An applicant shall submit, as part of its application, assurances that—

(a) At least two-thirds of the individuals it serves under its proposed Educational Opportunity Centers project will be low-income individuals who are potential first-generation college students;

(b) Individuals who are receiving services from another Educational Opportunity Centers project or a Talent Search project under 34 CFR Part 643 will not receive services under the proposed project;

(c) The project will be located in a setting or settings accessible to the individuals proposed to be served by the project; and

(d) If the applicant is an institution of higher education, it will not use the project as a part of its recruitment program.

(Authority: 20 U.S.C. 1070a–16)

Subpart C—How Does the Secretary Make a Grant?

§ 644.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 644.21.

(ii) The maximum score for all the criteria in § 644.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application for a new grant to continue to serve substantially the same populations or campuses that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience in delivering services under the expiring project on the basis of the criteria in § 644.22.

(ii) The maximum score for all the criteria in § 644.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(3) The Secretary awards additional points equal to 10 percent of the application's score under paragraphs (a)(1) and (2) of this section to an application for a project in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (Palau), or the Northern Mariana Islands if the applicant meets the requirements of subparts A, B, and D of this part.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) through (3) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to serve geographic areas and eligible populations that have been underserved by the Educational Opportunity Centers program.

(d) The Secretary may decline to make a grant to an applicant that carried out a project that involved the fraudulent use of funds under section 402A(c)(2)(B) of the HEA.

(Authority: 20 U.S.C. 1070a–11, 1070a–16, and 1144a(a))

§ 644.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for an Educational Opportunity Centers project in the proposed target area on the basis of the extent to which the application contains clear evidence of—

(1) A high number or percentage, or both, of low-income families residing in the target area;

(2) A high number or percentage, or both, of individuals residing in the target area with education completion levels below the baccalaureate level;

(3) A high need on the part of residents of the target area for further education and training from programs of postsecondary education in order to meet changing employment trends; and

(4) Other indicators of need for an Educational Opportunity Centers project, including the presence of unaddressed educational or socioeconomic problems of adult residents in the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to each of the purposes of the Educational Opportunity Centers program stated in § 644.1;

(2) Address the needs of the target area;

(3) Are clearly described, specific, and measurable; and

(4) Are ambitious but attainable within each budget period and the project period given the project budget and other resources.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (4 points) The plan to inform the residents, schools, and community organizations in the target area of the goals, objectives, and services of the project and the eligibility requirements for participation in the project;

(2) (4 points) The plan to identify and select eligible participants and ensure

their participation without regard to race, color, national origin, gender, or disability;

(3) (2 points) The plan to assess each participant's need for services provided by the project;

(4) (12 points) The plan to provide services that meet participants' needs and achieve the objectives of the project; and

(5) (8 points) The management plan to ensure the proper and efficient administration of the project including, but not limited to, the project's organizational structure, the time committed to the project by the project director and other personnel, and, where appropriate, its coordination with other projects for disadvantaged students.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which the applicant has made provision for resources to supplement the grant and enhance the project's services, including—

(1) (8 points) Facilities, equipment, supplies, personnel, and other resources committed by the applicant; and

(2) (8 points) Resources secured through written commitments from schools, community organizations, and others.

(e) *Quality of personnel* (9 points). (1) The Secretary evaluates the quality of the personnel the applicant plans to use in the project on the basis of the following:

(i) The qualifications required of the project director.

(ii) The qualifications required of each of the other personnel to be used in the project.

(iii) The plan to employ personnel who have succeeded in overcoming the disadvantages or circumstances like those of the population of the target area.

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, using specific and quantifiable measures, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for the disclosure of unanticipated project outcomes, using quantifiable measures if appropriate.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a–16)

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary reviews information relating to an applicant's performance under its expiring Educational Opportunity Centers project. This information includes performance reports, audit reports, site visit reports, and project evaluation reports.

(b) The Secretary evaluates the applicant's prior experience in delivering services on the basis of the following criteria:

(1) (3 points) (i) Whether the applicant provided services to the required number of participants who resided in the target area; and

(ii) Whether two-thirds of all participants served were low-income individuals and potential first-generation college students.

(2) (6 points) The extent to which the applicant met or exceeded its objectives regarding the provision of assistance to individuals in applying for admission to, or financial aid for, programs of postsecondary education.

(3) (6 points) The extent to which the applicant met or exceeded its objectives regarding the admission or reentry of participants to programs of postsecondary education.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a–16)

§ 644.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1994 at the lesser of—

(1) $180,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 644.30 What are allowable costs?

The cost principles that apply to the Educational Opportunity Centers program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Transportation, meals, and, with specific prior approval of the Secretary, lodging for participants and staff for—

(1) Visits to postsecondary educational institutions to obtain information relating to the admission of participants to those institutions;

(2) Participation in "College Day" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields in the target area and who can serve as role models for participants.

(b) Purchase of testing materials.

(c) Fees required for college admissions of entrance examinations if—

(1) A waiver is unavailable; and

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(d) In-service training of project staff.

(e) Rental of space if—

(1) Space is not available at the site of the grantee; and

(2) The rented space is not owned by the grantee.

(f) Purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping, if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.31 What are unallowable costs?

Costs that are unallowable under the Educational Opportunity Centers program include, but are not limited to, the following:

(a) Tuition, fees, stipends, and other forms of direct financial support for participants.

(b) Research not directly related to the evaluation or improvement of the project.

(c) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a-11 and 1070a-16)

§ 644.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project at the

time that the individual is selected to participate.

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Number of participants.* In each budget period, a grantee shall serve a minimum of 1,000 participants who reside in the target area. However, the Secretary may reduce the minimum number of these participants if the amount of the grant for the budget period is less than $180,000.

(c) *Recordkeeping.* For each participant, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 644.3;

(2) The services that are provided to the participant; and

(3) The specific educational benefits received by the participant.

(d) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (d)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (d) (1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO Programs (sections 402A through 402F of the HEA); or

(ii) Between the programs funded under sections 402A through 410 of the HEA and similar programs funded through other sources.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a-11 and 1070a-16).

Note: This appendix will not be codified in the Code of Federal Regulations.

Appendix—Analysis of Comments and Responses

The following is an analysis of the comments and changes in the regulations since the publication of the NPRM on October 26, 1993 (58 FR 57704). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes—and suggested changes that the Secretary is not legally authorized to make under applicable statutes—are not generally addressed.

How long is a project period? (§ 644.6)

Comment: One commenter suggested that the Secretary change the regulations so that a competition for Educational Opportunity Center (EOC) grants would be held once every two years. The commenter noted that such a schedule would be more efficient than a 4-year schedule and would be more fair because applicants who were not funded could reapply more quickly.

Discussion: The length of EOC project periods is prescribed in the Higher Education Act. Section 644.6 of these regulations merely reflects the statutory requirement.

Changes: None.

What selection criteria does the Secretary use? (§ 644.21)

Comment: Several commenters recommended that § 644.21(c)(5) be changed to require the Secretary to consider an applicant's plan to coordinate its EOC project with other projects that serve disadvantaged students. The commenters maintained that allotting points based on such a plan would encourage coordination among projects. Some commenters offered specific langauge suggesting that the Secretary evaluate an applicant's plan of operation based in part on "the plan, including the project's organization structure, its coordination with other programs for disadvantaged students sponsored by the sponsoring entity, and the time committed to the project by administrative and other staff, to ensure the proper and efficient administration of the project."

Discussion: The Secretary agrees that an applicant's plan to coordinate activities with other projects should be considered in the selection criteria and that such consideration will encourage coordination. However, the Secretary recognizes that in some cases an EOC project may be the only project for disadvantaged students administered by a particular institution or agency. Therefore, the Secretary has adopted much of the suggested language but has included the modifier "where appropriate" to ensure that applicants who administer only an EOC project will not be disadvantaged by their inability to coordinate with other projects.

Changes: Section 644.21(c)(5) has been changed to read: "The management plan to ensure the proper and efficient administration of the project including, but not limited to, the project's organizational structure, the time committed to the project by the project director and other personnel, and, where appropriate, its coordination with other projects for disadvantaged students."

How does the Secretary evaluate prior experience? (§ 644.22)

Comment: Many commenters suggested that the Secretary change § 644.22, relating to prior experience points. None of the commenters asked the Secretary to change the wording of the criteria; all requested that the Secretary describe in greater detail how the criteria are applied. Some commenters argued the regulations should require the Secretary to notify grantees as to the number of points they received for prior experience before the funding determinations are made. Commenters argued that such a procedure would allow grantees to "correct errors" in the Secretary's evaluation of their prior experience. Other commenters suggested that the regulations should require the Secretary to award a portion of the prior experience points each year based on a grantee's annual performance report. They suggested that each grantee should be informed within a specified period as to how well each performance report was scored.

Commenters also noted that the regulations should require the Secretary to award prior experience points based only on a grantee's performance during the first two years of its grant. This procedure, they argued, would ensure that a grantee's prior experience would be measured against actual outcomes rather than speculation about what the grantee is likely to have accomplished by the end of the project period. Several commenters offered suggestions on how prior experience points should be allocated under the two-year evaluation schedule.

Discussion: The comments suggest a high degree of anxiety over how the Secretary rates prior experience. The comments imply that the assessment process should be continuous, extensive, and interactive. The Secretary, however, has no intention of unnecessarily burdening grantees with such a process. Under § 644.20(2)(i) of the regulations, the Secretary only evaluates prior experience when a grantee submits an application for "a new grant to continue to serve substantially the same populations or campuses that the applicant is serving under an expiring grant." Prior experience is not evaluated until the Secretary receives such an application. This procedure reflects the mandate expressed in section 402(A)(c)(1) of the Higher Education Act, which states: "In making grants * * * the Secretary shall consider prior experience." The law requires the Secretary to evaluate prior experience only when the Secretary is deciding to make a grant; the Secretary only decides to make a grant if an application has been submitted. Thus, the final assessment of prior experience is conducted as part of the overall process for selecting new grants. This process begins when applications are received and ends when applicants are notified of the Secretary's funding decisions.

The application process is not an interactive process. After the closing date, no additional information is accepted or considered. Therefore, any information that an applicant feels should be considered during the course of the selection process should be provided before the closing date. The Secretary does not disclose information relating to the rank of applications until all applicants are notified of the Secretary's funding decisions. After applicants receive notification, they may request copies of documents that reflect the prior experience assessments.

Changes: None.

What are allowable costs? (§ 644.30)

Comment: Many commenters suggested that the Secretary amend § 644.30 of the proposed regulations to include college admission fees and college entrance examination fees in the list of allowable costs. The commenters noted that many adult EOC participants cannot afford to pay examination and application fees and are therefore discouraged from pursuing postsecondary education.

Discussion: The Secretary agrees that admission fees should be included in the list of allowable costs because some adult participants may be discouraged from

applying to postsecondary institutions because of the expense associated with examination and application fees. However, the Secretary strongly encourages Educational Opportunity Centers to work with higher educational institutions to secure waivers whenever possible. Further, application fees will not be an allowable cost under § 644.30 if the fee is paid to the grantee institution because the Secretary encourages grantees to provide meaningful support to the Educational Opportunity Centers that they administer.

Changes: The Secretary has changed § 644.30 so that the list of allowable costs includes fees required for college admissions applications or entrance examination fees if (1) a waiver of the fee is unavailable; and (2) the fee is paid by the grantee to a third party on behalf of a participant.

What are unallowable costs? (§ 644.31)

Comment: Many commenters requested that the Secretary remove transportation, meals, and lodging from the list of unallowable costs in § 644.31. The commenters further requested that the Secretary include transportation, meals, and lodging in the list of allowable costs in § 644.30. Several commenters argued that campus visits are necessary to help participants choose an appropriate postsecondary placement. Other commenters noted that such visits are often impossible for EOC participants who reside in rural areas. Finally, some commenters argued that transportation, meals, and lodging should be allowable costs because they are allowable under the Talent Search program.

Discussion: The Secretary believes that college visits are often necessary to help adult participants gain the confidence and insight that they need to feel comfortable in applying for college admission. The Secretary agrees with the commenters that it would be unfortunate if the cost of such visitations prevented some participants from pursuing postsecondary education. Therefore, on a case-by-case basis, transportation, lodging, and meals may be allowable costs under the circumstances described in the regulations.

Changes: The Secretary has removed transportation, lodging, and meals from the list of unallowable costs in § 644.31. The Secretary has also changed § 644.30 so that the list of allowable costs includes: "(a) Transportation, meals, and, with specific prior approval of the Secretary, lodging for participants and staff for—(1) Visits to postsecondary educational institutions to obtain information relating to the admission of participants to those institutions; (2) Participation in "College Day" activities; and (3) Field trips to observe and meet with people who are employed in various career fields in the target area and who can act as role models for participants."

What other requirements must a grantee meet? (§ 644.32)

Comment: Some commenters suggested that the Secretary should change § 644.32(d)(1) to read: "Unless a part-time director furthers coordination of the project with other programs for disadvantaged clients operated by the sponsoring institution or agency, or unless a waiver is granted, a grantee shall employ a full-time project director." The commenters argued that the change was necessary because the language in the NPRM does not reflect the intent of the 1992 Amendments to the Higher Education Act, which requires the Secretary to encourage coordination among TRIO programs and other programs for disadvantaged students and to allow for a less-than-full-time director.

One commenter recommended that the Secretary require a full-time project director at all Educational Opportunity Centers. The commenter noted that the degree of detail to which a director must be attentive requires a full-time commitment. The commenter further suggested that coordination among projects is desirable and can be accomplished when various directors work together for the mutual benefit of all projects on a single campus.

Discussion: The Secretary strongly supports coordination of EOC activities between and among projects to extent that the coordination fosters—

(1) Improved services for the EOC participants;

(2) More efficient or effective means of delivering services; or

(3) An increase in the resources available to participants.

There is no magic formula for coordination. It only occurs when all partners see it in their best interest to cooperate and coordinate activities to obtain some beneficial objectives. Projects do not have to share staff to coordinate activities. Coordination can occur in a number of ways by staff at all levels. Having a part-time director does not guarantee that coordination of activities will occur. Having a full-time director does not guarantee that the coordination of activities will not occur.

Each project is different in terms of its setting, resources, and support systems. The Secretary recognizes that a project may effectively operate with less than a full-time director if other support personnel are in place to assist in shared management duties. However, coordination can take many other forms. For example, coordination may be achieved by planning and conducting joint or cooperative field trips, lectures, career days, or test-preparation sessions. Coordination may also be achieved by sharing space or equipment.

Section 644.32(d)(1) accurately reflects both the intent of the 1992 Amendments to the HEA and the Secretary's commitment to coordination. Waivers of the requirement for a full-time director are available under § 644.32(d)(3) if an applicant can show that efforts to coordinate among projects will be hindered by not allowing one person to direct more than one project.

The Secretary believes that in many cases the size and scope of an EOC project require the attention of a full-time director. The average EOC project receives more than a million dollars over the course of a project period and serves more than eight thousand participants. Given the size and scope of EOC projects, the Secretary believes that the appropriateness of allowing a part-time director must be evaluated with great care.

Changes: None.

Comment: Several commenters suggested that the Secretary should change § 644.32(c)(3), relating to records of educational benefits. The commenters requested that the Secretary eliminate the phrase "the specific educational benefits to the participants that resulted from the services" because keeping a record of how each participant benefited from the services would be too burdensome. The commenters suggested that § 644.32(c)(3) require only that grantees keep a record of "the specific educational benefits *received* by the participant."

One commenter suggested that the Secretary should not change the recordkeeping requirement in § 644.32(c)(3) because it formed the basis for collecting valuable statistics.

Discussion: The Secretary agrees that the phrase "that resulted from the services" implies that a grantee must demonstrate and record a causal relationship between services and benefits. The Secretary believes that such a record is not necessary to indicate a benefit, particularly in instances where the services provided can be deemed to be benefits in and of themselves.

Changes: The recordkeeping requirement at § 644.32(c)(3) is changed to read "the specific educational benefits received by the participant."

[FR Doc. 94–903 Filed 1–14–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.066]

Educational Opportunity Centers; Notice Inviting Applications for New Awards for FY 1994

Purpose of Program: To provide grants to permit applicants to conduct projects designed to: (1) Provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and (2) assist individuals to apply for admission to institutions that offer programs of postsecondary education. This program supports the National Education Goals. Specifically, the program funds projects designed to increase education opportunities for adults (Goals 5).

Eligible Applicants: Institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies and organizations, and, in exceptional cases, secondary schools, such as if no other applicants are capable of providing an Educational Opportunity Centers project in the proposed target area.

Deadline for transmittal of applications: March 14, 1994.

Deadline for intergovernmental review: May 13, 1994.

Applications available: January 28, 1994.

Available funds: $22.5 million.

Estimated range of awards: $180,000–$750,000.

Estimated average size of awards: $346,000.

Estimated number of awards: 65.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 60 months.

Budget period: 12 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 644, as published in this same issue of the **Federal Register**.

For applications or information contact: Margaret Wingfield, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Washington, DC 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–16.

Dated: January 4, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–904 Filed 1–14–94; 8:45 am]

BILLING CODE 4001–01–P

federal register

Tuesday
January 18, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 301, 540, and 543
Inmate Accident Compensation, Incoming Publications and Inmate Legal Activities; Final Rule and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 301

RIN 1120–AA05

Inmate Accident Compensation

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, DOJ.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is extending coverage under Inmate Accident Compensation to inmates participating in approved work assignments for other Federal agencies. Because inmates participating in such assignments may be housed in a community corrections center, it is necessary to add procedures appropriate for the treatment and reporting of injuries and for processing claims which may arise from such assignments. This amendment also clarifies the applicability of lost-time wages, clarifies the effects of subsequent incarceration, clarifies the definition of "release", clarifies payment procedures for medical treatment, and corrects a typographical error in the citation of a court case. This amendment is intended to allow for the continued efficient operation of inmate work assignments.

EFFECTIVE DATE: February 17, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons published in the **Federal Register** on July 21, 1993 (58 FR 39096) a proposed rule on Inmate Accident Compensation clarifying its applicability to approved inmate work assignments for other federal agencies. The proposed amendment also clarified that lost-time wages shall be available only for inmates based at Bureau of Prisons institutions (see new § 301.201) and that the amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established for the Department of Health and Human Services Medicare program (see § 301.317). This amendment also revised the definition of "release" in § 301.102 to include reference to pretrial inmates. The proposed amendment also clarified § 301.316 by rewording its provisions regarding subsequent incarceration of a compensation recipient. There is no change in the intent of this section. Finally, the proposed amendment corrected a typographical error in the citation of the court case *U.S.* v. *Demko* which appears in § 301.319.

The Bureau of Prisons received no comment to its proposed rule, and the amendment is accordingly being issued as a final rule.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866; this rule was reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

List of Subjects in 28 CFR Part 301

Federal prison industries, Indemnity payments, Prisoners.

Kathleen M. Hawk,

Commissioner of Federal Prison Industries, and Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p) and 0.99, part 301 of 28 CFR, chapter III is amended as set forth below.

Chapter III—Federal Prisons Industries, Inc., Department of Justice

PART 301—INMATE ACCIDENT COMPENSATION

1. The authority citation for 28 CFR part 301 continues to read as follows:

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 301.101, paragraphs (a) and (b) are revised to read as follows:

§ 301.101 Purpose and scope.

* * * * * *

(a) Inmate Accident Compensation may be awarded to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in Federal Prison Industries, Inc., in institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities; or,

(b) Lost-time wages may be awarded to inmates assigned to Federal Prison Industries, Inc., to paid institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities for work-related injuries resulting in time lost from the work assignment.

3. In § 301.102, paragraph (b) is revised and paragraphs (d) and (e) are added to read as follows:

§ 301.102 Definitions.

* * * * *

(b)(1) For purposes of this part, the term *release* is defined as the removal of an inmate from a Bureau of Prisons correctional facility upon expiration of sentence, parole, final discharge from incarceration of a pretrial inmate, or transfer to a community corrections center or other non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(2) In the case of an inmate who suffers a work-related injury while housed at a community corrections center, *release* is defined as the removal of the inmate from the community corrections center upon expiration of sentence, parole, or transfer to any non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(3) In the case of an inmate who suffers a work-related injury while housed at a community corrections center and is subsequently transferred to a Bureau of Prisons facility, *release* is defined as the removal of the inmate from the Bureau of Prisons facility upon expiration of sentence, parole, or transfer to a community corrections center or other non-federal facility.

* * * * *

(d) For purposes of this part, the term *work detail supervisor* may refer to either a Bureau of Prisons or a non-Bureau of Prisons supervisor.

(e) For the purposes of this part, the phrase *housed at* or *based at* a "Bureau of Prisons institution" shall refer to an inmate that has a work assignment with a Bureau of Prisons institution or with another federal entity and is incarcerated at a Bureau of Prisons institution. For the purposes of this part, the phrase *based at* or *housed at* a "community corrections center" shall refer to an inmate who has a work assignment for a non-Bureau of Prisons federal entity and is incarcerated at a community corrections center.

§ 301.103 [Amended]

4. Section 301.103 is amended by revising the phrase "institutional work assignments" to read "work assignments".

5. Section 301.104 is revised to read as follows:

§ 301.104 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of the extent of the injury, the inmate shall immediately report the injury to his official work detail supervisor. In the case of injuries on work details for other federal entities, the inmate shall also report the injury as soon as possible to community corrections or institution staff, as appropriate. The work detail supervisor shall immediately secure such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injured inmate. First aid treatment may be provided by any knowledgeable individual. Medical, surgical, and hospital care shall be rendered under the direction of institution medical staff for all inmates based at Bureau of Prisons institutions. In the case of inmates based at community corrections centers, medical care shall be arranged by the work supervisor or by community corrections center staff in accordance with the medical needs of the inmate. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment recommended by medical staff or by other medical professionals may result in denial of any claim for compensation for any impairment resulting from the injury.

6. Section 301.105 is revised to read as follows:

§ 301.105 Investigation and report of injury.

(a) After initiating necessary action for medical attention, the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury. The work detail supervisor shall complete a BP–140, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. In the case of injuries on work details for other federal entities, the work supervisor shall also immediately inform community corrections or institution staff, as appropriate, of the injury. The injury report shall contain a signed statement from the inmate on how the accident occurred. The names and statements of all witnesses (e.g., staff, inmates, or others) shall be included in the report. If the injury resulted from the operation of mechanical equipment, an identifying description or photograph of the machine or instrument causing the injury shall be obtained, to include a description of all safety equipment used by the injured inmate at the time of the injury. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original and remaining copies of the injury report to the Institutional Safety Manager for review. In the case of inmates based at community corrections centers, the work detail supervisor shall provide the inmate with a copy of the injury report and shall forward the original and remaining copies of the injury report to the Community Corrections Manager responsible for the particular community corrections center where the inmate is housed.

(b) The Institution Safety Manager or Community Corrections Manager shall ensure that a medical description of the injury is included on the BP–140 whenever the injury requires medical attention. The Institution Safety Manager or Community Corrections Manager shall also ensure that the appropriate sections of BP–140, Page 2, Injury—Lost-Time Follow-Up Report, are completed and that all reported work injuries are properly documented.

§§ 301.201—301.204 [Redesignated as §§ 301.202—301.205]

7. In subpart B, §§ 301.201 through 301.204 are redesignated as §§ 301.202 through 301.205, and a new § 301.201 is added to read as follows:

§ 301.201 Applicability.

Lost-time wages shall be available only for inmates based at Bureau of Prisons institutions.

8. In § 301.303, paragraph (a) is amended by revising the first and the fourth sentences, paragraphs (b) through (e) are redesignated as (c) through (f), a new paragraph (b) is added, and newly designated paragraph (d) is amended by revising the first sentence to read as follows:

§ 301.303 Time parameters for filing a claim.

(a) No more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to this date, each inmate who feels that a residual physical impairment exists as a result of an industrial, institution, or other work-related injury shall submit a FPI Form 43, Inmate Claim for Compensation on Account of Work Injury. * * * The completed claim form shall be submitted to the Institution Safety Manager or Community Corrections Manager for processing.

(b) In the case of an inmate based at a community corrections center who is being transferred to a Bureau of Prisons institution, the Community Corrections Manager shall forward all materials relating to an inmate's work-related injury to the Institution Safety Manager at the particular institution where an inmate is being transferred, for eventual processing by the Safety Manager prior to the inmate's release from that institution.

* * * * *

(d) The claim, after completion by the physician conducting the impairment examination, shall be returned to the Institution Safety Manager or Community Corrections Manager for final processing. * * *

* * * * *

9. Section 301.316 is revised to read as follows:

§ 301.316 Subsequent incarceration of compensation recipient.

If a claimant, who has been awarded compensation on a monthly basis, is or becomes incarcerated at any federal, state, or local correctional facility, monthly compensation payments payable to the claimant shall ordinarily be suspended until such time as the claimant is released from the correctional facility.

10. Section 301.317 is amended by adding a sentence at the end to read as follows:,

§ 301.317 Medical treatment following release.

* * * The amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established pursuant to 42 U.S.C. 1395w–4 for the Department of Health and Human Services Medicare program.

11. Section 301.319 is amended by revising the citation at the end to read as follows:

§ 301.319 Exclusiveness of remedy.

* * * *U.S.* v. *Demko*, 385 U.S. 149 (1966).

[FR Doc. 94–1110 Filed 1–14–94; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 540 and 543

RIN 1120–AA15

Control, Custody, Care, Treatment and Instruction of Inmates; Incoming Publications and Inmate Legal Activities

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on Incoming Publications in order to require that inmates in medium security, high security, and administrative institutions may receive softcover publications only from the publisher, book club, or bookstore. Current regulations allow for these items to be received from any source. The proposed amendment also allows for the Warden to make an exception to this requirement and to the existing similar requirement for hardcover publications and newspapers. This change is being proposed in order to simplify security procedures designed to prevent the introduction of contraband into Bureau institutions. Provisions in the Bureau's regulations on Inmate Legal Activities which restate the Bureau's policy on receipt of incoming publications would be modified accordingly as a conforming amendment.

DATES: Comments due by March 21, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Incoming Publications. A final rule on this subject was published in the **Federal Register** on June 29, 1979 (44 FR 38260) and was amended December 7, 1982 (47 FR 55129) and January 3, 1985 (50 FR 410). A conforming amendment would be made to the Bureau's regulations on Inmate Legal Activities. A final rule on this subject was published in the **Federal Register** on June 29, 1979 (44 FR 38263) and was amended December 4, 1981 (46 FR 59509) and July 23, 1990 (55 FR 29992).

Current regulations in 28 CFR 540.71 allow an inmate to receive paperback books and magazines from any source. This proposed amendment would require that at medium security, high security, and administrative institutions all softcover publications may be received only from the publisher, book club, or book store. This would simplify Bureau procedures designed to prevent the introduction of contraband into Bureau institutions and would allow for more efficient use of Bureau staff and resources. In addition, this amendment would allow the Warden to make an exception when a publication is no longer available from the publisher, book club, or bookstore. In such cases, the Warden may require that the inmate provide written documentation that the publication is no longer available from these sources. The approval or disapproval of any request is to be documented in writing.

Bureau regulations on Inmate Legal Activities restate in § 543.11(d) the policy on receipt of incoming publications. As a conforming amendment, § 543.11(d) is also revised.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12886, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Parts 540 and 543

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to amend parts 540 and 543 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.71, paragraph (a) is revised to read as follows:

§ 540.71 Procedures.

(a)(1) At all Bureau institutions, an inmate may receive hardcover publications and newspapers only from the publisher, from a book club, or from a bookstore.

(2) At medium security, high security, and administrative institutions, an inmate may receive softcover publications only from the publisher, from a book club, or from a bookstore.

(3) At minimum security and low security institutions, an inmate may receive softcover publications (other than newspapers) from any source.

(4) The Warden may make an exception to the provisions of paragraphs (a)(1) and (2) of this section if the publication is no longer available from the publisher, book club, or bookstore. The Warden may require that the inmate provide written documentation that the publication is no longer available from these sources. The approval or disapproval of any request for an exception is to be documented in writing.

* * * * *

PART 543—LEGAL MATTERS

3. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

4. In § 543.11, paragraph (d) is amended by revising the first sentence as follows and by removing the third and fourth sentences:

§ 543.11 Legal research and preparation of legal documents.

* * * * *

(d) An inmate may receive or purchase law materials from outside the institution in accordance with the provisions on the receipt of incoming publications (see § 540.71 (a) of this chapter), but the Warden may reject material if there is a compelling reason in the interest of institution security, good order, or discipline. * * *

* * * * *

[FR Doc. 94–1109 Filed 1–14–94; 8:45 am]
BILLING CODE 4410–05–P

federal register

Tuesday
January 18, 1994

Part V

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K003609435420]

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the—

Caddo Adais Indians, Inc., c/o Mr. Rufus Davis, Rt. 2, Box 246, Robeline, Louisiana 71469.

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on September 13, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated: November 15, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–1116 Filed 1–14–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
January 18, 1994

Part VI

Department of Justice

Office of the Attorney General

28 CFR Part 36

Americans With Disabilities Act; Transportation Facilities and Accessible Automated Teller Machines (ATMs); Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR PART 36

[Order No. 1836–94]

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities: Amendments to the Americans With Disabilities Act Accessibility Guidelines (Accessible Automated Teller Machines and Transportation Facilities)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends Appendix A to the Department of Justice regulation implementing title III of the Americans with Disabilities Act (ADA) by incorporating the accessibility guidelines for transportation facilities issued by the Architectural and Transportation Barriers Compliance Board (Access Board), and by adopting the amendments to the reach range requirement for accessible automated teller machines (ATMs) and fare vending machines jointly issued by the Access Board and the Department of Transportation.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (202) 514–0301 (Voice), (202) 514–0383 (TDD) (the Division's ADA Information Line). These telephone numbers are not toll-free numbers.

Copies of this rule are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Coordination and Review Section at (202) 514–0301 (Voice) or (202) 514–0383 (TDD). The rule is also available on electronic bulletin board at (202) 514–6193. These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1991 (56 FR 35544), the Department of Justice (Department) published its final regulation implementing title III of the Americans with Disabilities Act of 1990 (ADA) Public Law 101–336, which prohibits discrimination on the basis of disability by private entities that own, lease, lease to, or operate a place of public accommodation, and requires that all new places of public accommodation and commercial facilities, and all alterations to such facilities, be designed and constructed so as to be readily accessible to and usable by persons with disabilities.

Section 36.406 of the regulation, "Standards for new construction and alterations," provides that new construction and alterations subject to the regulation shall comply with the standards for accessible design published as appendix A to the regulation. Appendix A contains the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which was separately published by the Architectural and Transportation Barriers Compliance Board (Access Board) as a final guideline on July 26, 1991 (56 FR 35408). On April 5, 1993, the Department issued a final rule containing technical amendments to appendix A (58 FR 17521), which incorporated technical corrections to ADAAG made by the Access Board on January 14, 1992 (57 FR 1393).

Section 36.406 of the title III regulation implements sections 306(b) and 306(c) of the ADA, which require the Attorney General to promulgate standards for accessible design for buildings and facilities subject to the ADA, and require those standards to be consistent with the supplemental minimum guidelines and requirements for accessible design published by the Access Board pursuant to section 504 of the ADA. Sections 5 through 9 of appendix A are special application sections and contain additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, and transient lodging. Section 10 of ADAAG, which was intended to establish special access requirements for transportation facilities, was reserved when the Department's final rule was published because the Access Board had not yet published that section of its minimum guidelines.

On September 6, 1991 (56 FR 45500), the Access Board published a final rule amending the guidelines by adding final guidelines for transportation facilities as a new section 10, and on January 14, 1992 (57 FR 1393), the Access Board published a final rule making corrections to that section.

On September 8, 1992 (57 FR 41006), the Access Board published a Notice of Proposed Rulemaking (NPRM) proposing to amend the reach range requirements for accessible ATMs under ADAAG based on new information received in connection with a petition for rulemaking. The Access Board's proposed amendment set out the reach ranges for controls when a person using a wheelchair could make a forward approach only, a parallel approach only, or both a forward and parallel approach to an ATM. To address the reach over an obstruction resulting from recessed controls and the installation of fixtures called "surrounds" (which contain writing counters and bins for envelopes and waste paper), in front of ATMs, the proposed amendment included a table of reach depths and maximum heights for the placement of the controls where the reach depth to any control is more than 10 inches from a parallel approach. A detailed discussion of the proposed amendment is contained in the Access Board's proposed rule. On November 17, 1992 (57 FR 54210), the Department of Transportation issued an NPRM to amend its ADA regulations in several respects, including conforming the standards for transportation facilities to incorporate the reach range requirements for ATMs. The amendment is relevant to transportation facilities because fare vending machines are required to comply with the same requirements as ATMs. See ADAAG 10.3.1(7). On July 15, 1993 (58 FR 38204), the Access Board and the Department of Transportation published a joint final rule adopting the proposed changes to the reach range requirements for ATMs and fare vending machines.

On April 5, 1993 (58 FR 17558), this Department published a proposed rule to amend appendix A to its title III regulation to include section 10 of the Access Board's final guidelines, as amended (transportation facilities), and to adopt the changes relating to the reach range requirements applicable to automated teller machines proposed by the Access Board in its September 8, 1992 (57 FR 41006) proposed rule. In the Department's proposed rule, it sated that "[a]ll timely comments received by the Board on the proposed transportation rule issued by the Board on March 20, 1991 (56 FR 11874), and on the proposed rule relating to ATM reach ranges issued by the Board on September 8, 1992 (57 FR 41006), will be deemed by the Department to have been submitted in response to this proposed rule and will be thoroughly analyzed and considered by the Department prior to the adoption of any final rule. Therefore, it is not necessary for any timely comments submitted to the Board on those proposed rules to be resubmitted to the Department." Any new comments on the Department's proposed rule were due on or before May 5, 1993.

Summary of Rule and Comments

The Department of Justice is adopting as a final rule the accessibility guidelines for transportation facilities published by the Access Board as a final rule on September 6, 1991, as amended by the Access Board on January 14, 1992, and as further jointly amended on July 15, 1993, by the Access Board and the Department of Transportation, to reflect changes relating to reach range requirements.

The Department is also adopting as a final rule the proposed amendment to the reach range requirement for ATMs. As stated in the Department's NPRM, all timely comments received by the Access Board on the proposed transportation and ATM rules have been analyzed by the Department in connection with this final rule. An analysis of these comments is contained in the final rules issued by the Access Board and referenced above, and the Department concurs with the Access Board's analysis. In addition to the comments previously received by the Access Board, the Department directly received seven comments in response to its NPRM. Of these seven comments, three substantially duplicated comments on the proposed revisions to ATM requirements previously sent to the Access Board by the same commenters, and two addressed issues not covered by the NPRM. Of the two new comments on issues raised by the NPRM, one expressed support for both the proposed transportation and the proposed ATM provisions without discussing any rationable for such support, and on comment, submitted by an advocacy group, opposed the changes to ATM reach range requirements on the ground that the changes would not make ATMs readily accessible to and usable by individuals with disabilities, but did not include any additional documentation.

Regulatory Process Matters

The Department has determined that this final rule is not a major rule under E.O. 12291. Accordingly, a regulatory impact statement is not required.

The Department has determined that this final rule will not have a significant economic impact on a substantial number of small business entities. Therefore, it is not subject to the Regulatory Flexibility Act.

The Department also has determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, Reporting and recordkeeping requirements.

Dated: January 5, 1994.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 306(b) of the Americans with Disabilities Act, Pub. L. 101–336, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

Janet Reno,

Attorney General.

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 is revised to read as follows:

Authority: Americans With Disabilities Act of 1990 (42 U.S.C. 12186).

2. The appendix to § 36.406 is amended by removing "[10, Reserved]" in the last line of the third column and adding, in lieu thereof, "10".

3. Appendix A to part 36 is amended by revising paragraph 20 in section 4.1.3, by revising section 4.43 and sections 4.34.1 through 4.34.4, by adding 4.34.5, by revising the heading of section 10, by adding the text to section 10, and by adding sections A10.3 and A10.3.1(7) to the appendix to appendix A. Pages 10, 58, 67, and A17 are republished with the revisions and additions included, and pages 58A and 68 through 71 are added, to read as follows:

Appendix A to Part 36—Standards for Accessible Design

* * * * *

BILLING CODE 4410-01-M

4.1.3 Accessible Buildings: New Construction

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) in places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more machines are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

4.33.5 Access to Performing Areas

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. *Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.*

4.34 Automated Teller Machines.

4.34.1 General. *Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.*

4.34.2 Clear Floor Space. *The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.*

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		Maximum Height	
In	Mm	In	Mm
10	255	54	1370
11	280	53½	1360
12	305	53	1345
13	330	52½	1335
14	355	51½	1310
15	380	51	1295
16	405	50½	1285
17	430	50	1270
18	455	49½	1255
19	485	49	1245
20	510	48½	1230
21	535	47½	1205
22	560	47	1195
23	585	46½	1180
24	610	46	1170

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. *Controls for user activation shall comply with 4.27.4.*

4.34.5 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

4.35.3 Doors. *All doors to accessible dressing rooms shall be in compliance with section 4.13.*

4.35.4 Bench. *Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.*

4.35.5 Mirror. *Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3, one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and, if provided, at least one tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

(f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one accessible floor.

9.5.3. Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

10. TRANSPORTATION FACILITIES.

10.1 General. Every station, bus stop, bus stop pad, terminal, building or other transportation facility, shall comply with the applicable provisions of 4.1 through 4.35, sections 5 through 9, and the applicable provisions of this section. The exceptions for elevators in 4.1.3(5), exception 1 and 4.1.6(1)(k) do not apply to a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal, or facilities subject to Title II.

10.2 Bus Stops and Terminals.

10.2.1 New Construction.

(1) Where new bus stop pads are constructed at bus stops, bays or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

(2) Where provided, new or replaced bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter. Such shelters shall be connected by an accessible route to the boarding area provided under paragraph (1) of this section.

(3) Where provided, all new bus route identification signs shall comply with 4.30.5. In addition, to the maximum extent practicable, all new bus route identification signs shall comply with 4.30.2 and 4.30.3. Signs

that are sized to the maximum dimensions permitted under legitimate local, state or federal regulations or ordinances shall be considered in compliance with 4.30.2 and 4.30.3 for purposes of this section.

EXCEPTION: Bus schedules, timetables, or maps that are posted at the bus stop or bus bay are not required to comply with this provision.

10.2.2 Bus Stop Siting and Alterations.

(1) Bus stop sites shall be chosen such that, to the maximum extent practicable, the areas where lifts or ramps are to be deployed comply with section 10.2.1(1) and (2).

(2) When new bus route identification signs are installed or old signs are replaced, they shall comply with the requirements of 10.2.1(3).

10.3 Fixed Facilities and Stations.

10.3.1 New Construction. New stations in rapid rail, light rail, commuter rail, intercity bus, intercity rail, high speed rail, and other fixed guideway systems (e.g., automated guideway transit, monorails, etc.) shall comply with the following provisions, as applicable:

(1) Elements such as ramps, elevators or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public. The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. Where the circulation path is different, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7(1) shall be provided to indicate direction to and identify the accessible entrance and accessible route.

(2) In lieu of compliance with 4.1.3(8), at least one entrance to each station shall comply with 4.14, Entrances. If different entrances to a station serve different transportation fixed routes or groups of fixed routes, at least one entrance serving each group or route shall comply with 4.14, Entrances. All accessible entrances shall, to the maximum extent practicable, coincide with those used by the majority of the general public.

(3) Direct connections to commercial, retail, or residential facilities shall have an accessible route complying with 4.3 from the point of connection to boarding platforms and all transportation system elements used by the public. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements used by the public.

(4) Where signs are provided at entrances to stations identifying the station or the entrance, or both, at least one sign at each entrance shall comply with 4.30.4 and 4.30.6. Such signs shall be placed in uniform locations at entrances within the transit system to the maximum extent practicable.

EXCEPTION: Where the station has no defined entrance, but signage is provided, then the accessible signage shall be placed in a central location.

(5) Stations covered by this section shall have identification signs complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Signs shall be placed at frequent intervals and shall be clearly visible from within the vehicle on both sides when not obstructed by another train. When station identification signs are placed close to vehicle windows (i.e., on the side opposite from boarding) each shall have the top of the highest letter or symbol below the top of the vehicle window and the bottom of the lowest letter or symbol above the horizontal mid-line of the vehicle window.

(6) Lists of stations, routes, or destinations served by the station and located on boarding areas, platforms, or mezzanines shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. A minimum of one sign identifying the specific station and complying with 4.30.4 and 4.30.6 shall be provided on each platform or boarding area. All signs referenced in this paragraph shall, to the maximum extent practicable, be placed in uniform locations within the transit system.

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between the rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

10.3.2 Existing Facilities: Key Stations.

(15) Where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility and system to the maximum extent practicable.

(16) Where provided in below grade stations, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate before the risers begin to form. All escalator treads shall be marked by a strip of clearly contrasting color, 2 inches in width, placed parallel to and on the nose of each step. The strip shall be of a material that is at least as slip resistant as the remainder of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

(17) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

EXCEPTION: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4:10, Fig. 22.

(18) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(19) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations.

(1) Rapid, light and commuter rail key stations, as defined under criteria established by the Department of Transportation in subpart C of 49 CFR part 37 and existing intercity rail stations shall provide at least one accessible route from an accessible entrance to those areas necessary for use of the transportation system.

(2) The accessible route required by 10.3.2(1) shall include the features specified in 10.3.1 (1), (4)-(9), (11)-(15), and (17)-(19).

(3) Where technical infeasibility in existing stations requires the accessible route to lead from the public way to a paid area of the transit system, an accessible fare collection system, complying with 10.3.1(7), shall be provided along such accessible route.

(4) In light rail, rapid rail and commuter rail key stations, the platform or a portion thereof and the vehicle floor shall be coordinated so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 1-1/2 inches under all normal passenger load conditions, and the horizontal gap, measured when the vehicle is at rest, is no greater than 3 inches for at least one door of each vehicle or car required to be accessible by 49 CFR part 37.

EXCEPTION 1: Existing vehicles retrofitted to meet the requirements of 49 CFR 37.93 (one-car-per-train rule) shall be coordinated with the platform such that, for at least one door, the vertical difference between the vehicle floor and the platform, measured when the vehicle is at rest with 50% normal passenger capacity, is within plus or minus 2 inches and the horizontal gap is no greater than 4 inches.

EXCEPTION 2: Where it is not structurally or operationally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38, shall suffice.

(5) New direct connections to commercial, retail, or residential facilities shall, to the maximum extent feasible, have an accessible route complying with 4.3 from the point of connection to boarding platforms and all transportation system elements used by the public. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements used by the public.

10.3.3 Existing Facilities: Alterations.

(1) For the purpose of complying with 4.1.6(2) Alterations to an Area Containing a Primary Function, an area of primary function shall be as defined by applicable provisions of 49 CFR 37.43(c) (Department of Transportation's ADA Rule) or 28 CFR 36.403 (Department of Justice's ADA Rule).

10.4. Airports.

10.4.1 New Construction.

(1) Elements such as ramps, elevators or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. Where the circulation path is different, directional signage complying with 4.30.1, 4.30.2, 4.30.3 and 4.30.5 shall be provided which indicates the location of the nearest accessible entrance and its accessible route.

(3) Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(4) Where public pay telephones are provided, and at least one is at an interior location, a public text telephone shall be provided in compliance with 4.31.9. Additionally, if four or more public pay telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location:

(a) a main terminal outside the security areas;
(b) a concourse within the security areas; or
(c) a baggage claim area in a terminal.

Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(5) Baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2.4. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(6) Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons with a hearing loss or who are deaf. Such methods may include, but are not limited to, visual paging systems using video monitors and computer technology. For persons with certain types of hearing loss such methods may include, but are not limited to, an assistive listening system complying with 4.33.7.

(7) Where clocks are provided for use by the general public the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with their background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility to the maximum extent practicable.

(8) Security Systems. [Reserved]

10.5 Boat and Ferry Docks.

[Reserved]

A4.33.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 Types of Listening Systems. *An assistive listening system appropriate for an assembly area for a group of persons or where the specific individuals are not known in advance, such as a playhouse, lecture hall or movie theater, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for an assembly area will necessarily be geared toward the "average" or aggregate needs of various individuals.* A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, *magnetic induction* loops are the most feasible type of listening system for people who use hearing aids *equipped with "T-coils,"* but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them *without special receivers.* Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

Table A2, reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief," shows some of the advantages and disadvantages of different types of assistive listening systems. In addition, the Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

A5.0 Restaurants and Cafeterias.

A5.1 General. *Dining counters (where there is no service) are typically found in small carry-out restaurants, bakeries, or coffee shops and may only be a narrow eating surface attached to a wall. This section requires that where such a dining counter is provided, a portion of the counter shall be at the required accessible height.*

A7.0 Business and Mercantile.

A7.2(3) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

A7.3 Check-out Aisles. *Section 7.2 refers to counters without aisles; section 7.3 concerns check-out aisles. A counter without an aisle (7.2) can be approached from more than one direction such as in a convenience store. In order to use a check-out aisle (7.3), customers must enter a defined area (an aisle) at a particular point, pay for goods, and exit at a particular point.*

A10.3 Fixed Facilities and Stations.

A10.3.1(7) Route Signs. *One means of making control buttons on fare vending machines usable by persons with vision impairments is to raise them above the surrounding surface. Those activated by a mechanical motion are likely to be more detectable. If farecard vending, collection, and adjustment devices are designed to accommodate farecards having one tactually distinctive corner, then a person who has a vision impairment will insert the card with greater ease. Token collection devices that are designed to accommodate tokens which are perforated can allow a person to distinguish more readily between tokens and common coins. Thoughtful placement of accessible gates and fare vending machines in relation to inaccessible devices will make their use and detection easier for all persons with disabilities.*

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Tuesday
January 18, 1994

Part VII

Department of Agriculture

7 CFR Part 25

Department of Housing and Urban Development

24 CFR Part 597

Designation of Empowerment Zones and Enterprise Communities; Interim Rules and Notices

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

RIN 0503–AA09

Designation of Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim regulation implements that portion of subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993) dealing with the designation of rural Empowerment Zones and Enterprise Communities. Published elsewhere in this **Federal Register** is a companion regulation by the Department of Housing and Urban Development which implements their portion of title XIII of the Omnibus Budget Reconciliation Act of 1993. This rule authorizes the Secretary of Agriculture (USDA) to designate not more than three rural Empowerment Zones and not more than thirty rural Enterprise Communities based upon the effectiveness of the strategic plan submitted by an applicant and nominated by a State or States and local governments.

The purpose of this program is to empower rural communities and their residents to create jobs and opportunities to build for tomorrow as part of a Federal-State-local and private-sector partnership. Businesses will be encouraged to invest and create jobs in distressed areas, and comprehensive local strategic plans are to be adopted and implemented, encouraging entrepreneurship, furthering local self-development and assisting in the revitalization of these areas.

DATES: Interim rule effective January 18, 1994. Written comments must be submitted on or before February 17, 1994.

ADDRESSES: *Comments on Rule:* Interested persons are invited to submit comments regarding this interim rule to the Office of the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, Department of Agriculture, room 6348–S, 14th Street and Independence Avenue, SW., Washington, DC 20250. Communications should refer to the above CFR part and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Beverly C. Gillot, Strategy Development Staff, Rural Development Administration, Department of Agriculture, room 5405, 14th and Independence Ave, SW., Washington, DC 20250–3200, telephone 202–690–1045. (This is not a toll-free number), or by sending an Internet Mail message to: info@ezec.usda.gov to obtain information.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). Because these requirements are identical to those being required by the Department of Housing and Urban Development in their companion rule being published elsewhere in this **Federal Register**, clearance was sought through HUD for both agencies. The application was approved for use under OMB Number 2506–0148.

I. Background

The Empowerment Zones program confers upon rural distressed American communities the opportunity to take effective action to create jobs and opportunities. The program combines tax benefits with substantial investment of Federal resources and enhanced coordination among Federal agencies.

All communities which complete the nomination process will be strengthened by it; gaining by taking stock of their assets and problems, by creating a vision of a better future, and by structuring a plan for achieving their vision. Local partnerships among community residents, businesses, financial institutions, service providers, neighborhood associations and State and local governments will be formed or strengthened by going through the application process. Communities will be afforded an opportunity to work with these partners in the creation and implementation of a community-based strategic plan.

Communities that are not designated as Empowerment Zones or Enterprise Communities are eligible for certain benefits. Under a separate program directed by the Department of Housing and Urban Development, Community Development Corporations (CDCs) nominated by the locality, or the applicant for the Empowerment Zone or Enterprise Community, will be considered eligible for designation to receive tax preferred contributions from donors. HUD has committed to designating eight rural CDCs for this program. Communities with innovative visions for change will be considered for requested waivers of Federal program regulations, flexible use of existing program funds, and cooperation in meeting essential mandates, even if they do not receive a designation by the Secretary as an Empowerment Zone or Enterprise Community.

Communities that are designated as Enterprise Communities receive a number of benefits. Enterprise Communities are eligible for new Tax-Exempt Facilities Bonds for certain private business activities. States with designated Communities will receive Empowerment Zone/Enterprise Community Social Service Block Grants (EZ/EC SSBG) in the amount of approximately $3 million for each rural Enterprise Community to pass through to each designated area for approved activities identified in the strategic plans. Enterprise Communities receive special consideration in competition for funding under numerous Federal programs, including the new National Service and Community Policing initiatives. The Federal Government will focus special attention on working cooperatively with designated Enterprise Communities to overcome regulatory impediments, to permit flexible use of existing Federal funds, and to assist these Communities in meeting essential mandates.

Communities that are designated as Empowerment Zones receive all of the benefits provided to Enterprise Communities, in addition to other benefits. States with designated Empowerment Zones will receive Empowerment Zone/Enterprise Community Social Service Block Grants in the amount of $40 million for each rural Empowerment Zone. Employer Wage Credits for Empowerment Zone residents are provided to qualified employers engaged in trade, business, or human service delivery in designated Empowerment Zones. Businesses are afforded an increased deduction under section 179 of the Internal Revenue Code for qualified investments.

The rural part of the program will be administered by USDA as a Federal-State-local-private partnership, with a minimum of red tape associated with the application process. Applicants must demonstrate the ability to design and implement an effective strategic plan for real opportunities for growth and revitalization, that deal with local problems is a comprehensive way, and must demonstrate the capacity or the

commitment to carry out these plans. Development of an effective plan must also involve the participation of the community affected by the nomination of the rural area, and of the private sector, acting in concert with the State or States and local governments. The plan should be developed in accordance with four key principles, which will also serve as the basis for the selection criteria that will be used to evaluate the plan. These key principles reflect the Secretary's intention that Empowerment Zone and Enterprise Community designations should be based on potential for successful economic and community revitalization as reflected in the strategic planning process, participants in the plan, and the quality of the plan. Poverty, unemployment, and other need factors are critical in determining eligibility for Empowerment Zone or Enterprise Community status, but play a less significant role in the selection process. The four key principles are:

(1) Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, and training for jobs that offer upward mobility;

(2) Sustainable community development, to advance the creation of liveable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development;

(3) Community-based partnerships, involving participation of all segments of the community, including the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning, other community institutions, and individual citizens; and

(4) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assests and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

State and local governments and economic development corporations that are state chartered may nominate distressed rural areas for designation as Empowerment Zones (which will also permit their consideration for designation as Enterprise Communities), or solely for designation as Enterprise Communities.

Title XIII of the Omnibus Reconciliation Act of 1993 included Empowerment Zones and Enterprise Communities as a new program.

II. Program Description

General

Pursuant to title XIII of the Omnibus Reconciliation Act of 1993, the Secretary of USDA may designate up to three rural Empowerment Zones and up to thirty rural Enterprise Communities.

Eligibility

To be eligible for designation as rural Empowerment Zone or Enterprise Community an area must:

(1) Have a maximum population of 30,000;

(2) Be one of pervasive poverty, unemployment, and general distress;

(3) Not exceed one thousand square miles in total land area:

(4) Demonstrate a poverty rate that is not less than:

(a) 20 percent in each census tract or census block numbering area (BNA);

(b) 25 percent in 90 percent of the population census tracts and BNAs within the nominated area;

(c) 35 percent for at least 50 percent of the population census tracts and BNAs within the nominated area;

(5) Be located entirely within no more than three contiguous States; if it is located in more than one State, the area must have one continuous boundary; if located in only one State, the area may consist of no more than three noncontiguous parcels;

(6) If the nominated area consists of noncontiguous parcels, each must independently meet the three poverty requirements;

(7) Be located entirely within the jurisdiction of the unit or units of general local government making the nomination;

(8) Not include any portion of a census-defined central business district unless the poverty rate for each population census tract is at least 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community; and

(9) Not include any portion of an Indian reservation.

Nomination Process

The law requires that areas be nominated by one or more local governments and the State(s) in which a nominated rural area is located. Nominations can be considered for designation only if:

(1) The area meets the eligibility requirements set forth in these rules;

(2) The area is within the jurisdiction of the nominating local government(s) and the State(s);

(3) The local government(s) and State(s) provide assurances that the required strategic plan submitted by the applicant will be implemented;

(4) All information furnished by the nominating local government(s) and State(s) is determined by the Secretary of USDA to be reasonably accurate;

(5) The local government(s) and State(s) certify that no portion of a nominated rural area is already in an Empowerment Zone or Enterprise Community or in an area otherwise nominated for designation; and

(6) The local government(s) and State(s) certify that they possess the legal authority to make the nomination.

The nomination must be accompanied by an application for designation including a strategic plan, which:

(1) Indicates and briefly describes the specific groups, organizations and individuals participating in the development of the plan, and describes the history of these groups in the community;

(2) Explains how participants were selected and provides evidence that the participants, taken as a whole, are broadly representative of the racial, cultural and economic diversity of the community;

(3) Describes the role of the participants in the creation and development of the plan and indicates how they will participate in its implementation;

(4) Identifies two or three topics addressed in the plan that caused the most serious disagreements among participants and describes how those disagreements were resolved;

(5) Explains how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provides evidence that key participants have the capacity or how they will develop the capacity to implement the plan;

(7) Provides a brief explanation of the community's vision for revitalizing the area;

(8) Explains how the vision creates economic opportunity, encourages self-sufficiency and promotes sustainable community development;

(9) Identifies key needs of the area and the barriers that restrict the community from achieving such goals, including a description of poverty and general distress, barriers to economic opportunity and development and barriers to human development;

(10) Discusses how the vision is related to the assets and capacities of the area and its surroundings; and

(11) Describes the ways in which the community's approaches to economic development, social/human services, transportation, housing, sustainable community development, public safety, drug abuse prevention, and educational and environmental concerns will be addressed in a coordinated fashion.

The strategic plan must identify how government resources will be used to support the plan. Specifically, the plan must indicate:

(1) How Social Service Block Grant funds for designated Zones and Communities, tax benefits for designated Zones and Communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(2) The level of commitment necessary to ensure that these resources will be available to the area upon designation; and

(3) The Federal resources being applied for or for which applications are planned.

The plan must identify private resources committed to its implementation, including:

(1) Private resources and support, including assistance from business, non-profit organizations and foundations, that are available to be leveraged with public resources; and

(2) Assurances that these resources will be made available to the area upon designation.

The plan must address changes needed in Federal rules and regulations necessary to implement the plan, including:

(1) Specific paperwork or other Federal program requirements that need to be altered to permit effective implementation of the strategic plan; and

(2) Specific regulatory and other impediments to implementing the strategic plan for which waivers are requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes.

The plan must demonstrate how State and local governments will reinvent themselves to help implement the plan, by:

(1) Identifying the changes that will be made in State and local organizations, processes and procedures, including laws and ordinances, to facilitate implementation of the plan; and

(2) Explaining how different agencies in State and local governments will work together in new responsive ways to implement the strategic plan.

The plan must provide details as to the manner in which the plan will be implemented and indicate what benchmarks will be used to measure progress, by:

(1) Identifying the specific tasks necessary to implement the plan;

(2) Describing the partnerships that will be established to carry out the plan;

(3) Explaining how the strategic plan will be regularly revised to reflect new information and opportunities; and

(4) Identifying the baselines, benchmarks and goals that will be used in evaluating performance in implementing the plan.

III. Justification for Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, exemptions are permitted where an agency finds, for good cause, that compliance would be impracticable, unnecessary, or contrary to public interest. The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public comment would be contrary to the public interest. The statute requires that communities prepare a comprehensive strategic plan to submit their applications. For many communities, such planning can take up to 5 months. Several additional months will be required to evaluate the applications and make designations. Section 1391(c) of the legislation requires that designations be made only after 1993 and before 1996. Given the statutory mandate to make all designations within a two-year time period, the extra time required to publish a proposed rule for a 60-day comment period before development of a final rule for effect would be contrary to congressional intent and the purpose of the legislation. The longer time period would unduly postpone an economic recovery for those communities and their residents for which this program is intended. Further, the Department finds that good cause exists in that prior public comment is unnecessary because the legislation being implemented by this rule is very prescriptive, with little room for discretion on the part of the Secretary.

The Department is interested, however, in the public reaction to the rule, and invites the public to comment. The Department is limiting the comment period to 30 days to permit adequate time for review of public comments and development of a final rule.

IV. Notice

USDA is simultaneously publishing in this issue of the **Federal Register** a Notice Inviting Applications that contains more specific guidance on submission deadlines and the process of submission of applications.

V. Other Matters

National Environmental Policy Act

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

Executive Order 12866, Regulatory Planning and Review

This rule was reviewed and approved by the Office of Management and Review as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. The economic analysis required by Executive Order 12866 will be retained in the public file with the Department's Rule Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with The Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. To the extent that this rule affects those entities, its purpose is to reduce any disproportionate burden by providing for the waiver of regulations and by affording other incentives directed toward a positive economic impact. Therefore, no regulatory flexibility analysis under the Act is necessary.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The purpose of this rule is to provide a cooperative atmosphere between the Federal government and the States and local governments, and to reduce any regulatory burden imposed by the Federal government that impedes the ability of State and local governments to solve pressing economic, social, and physical problems in their communities.

List of Subjects in 7 CFR Part 25

Community development, Empowerment zones, Enterprise communities, Economic development, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

In accordance with the reasons set out in the preamble, title 7, subtitle A, part 25 of the Code of Federal Regulations is added as follows:

1. Title 7, subtitle A is amended by adding a new part 25 consisting only of subparts A through F at this time.

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Sec.

Subpart A—General Provisions

25.1 Applicability and scope.
25.2 Objective and purpose.
25.3 Definitions.
25.4 Secretarial review and designation.
25.5 Waivers.

Subpart B—Area Requirements

25.100 Eligibility requirements and data usage.
25.101 Data utilized for eligibility determinations.
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Subpart C—Nomination Procedure

25.200 Nominations by State and local governments.
25.201 Evaluating the strategic plan.
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25.300 USDA action and review of applications.
25.301 Selection factors for designation of nominated rural areas.
25.302 Number of Rural Empowerment Zones and Enterprise Communities.

Subpart E—Post-Designation Requirements

25.400 Reporting.
25.401 Periodic performance reviews.
25.402 Validation of designation.
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Subpart F—Special Rules

25.500 Indian reservations.
25.501 Governments.
25.502 Nominations by economic development corporations.
25.503 Use of census data.
25.504 Rural areas.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989 (a) I; 42 U.S.C. 1480.

Subpart A—General Provisions

§ 25.1 Applicability and scope.

(a) *Applicability.* This part establishes policies and procedures applicable to rural Empowerment Zones and Enterprise Communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Pub. L. 103–66, approved August 10, 1993), which amended the Internal Revenue Code by adding a new subchapter U, relating to the designation and treatment of Empowerment Zones and Enterprise Communities.

(b) *Scope.* This part contains provisions relating to area requirements, the nomination process for rural Empowerment Zones and rural Enterprise Communities, and the designation of these Zones and Communities by USDA. Provisions dealing with the nominations and designation of urban Empowerment Zones and Enterprise Communities are promulgated by the United States Department of Housing and Urban Development (HUD). USDA and HUD will consult in all cases in which nominated areas possess both rural and urban characteristics, and will utilize a flexible approach in determining the appropriate designation.

§ 25.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in rural areas, to stimulate the creation of new jobs, particularly for the disadvantaged and long-term unemployed, and to promote revitalization of economically distressed areas, primarily by providing or encouraging:

(a) Coordination of economic, human, community, and physical development plans and related activities at the local level;

(b) Local partnerships fully involving affected communities and local institutions and organizations in developing and implementing a strategic plan for any nominated rural Empowerment Zone or Enterprise Community;

(c) Tax incentives and credits; and

(d) Empowerment Zone/Enterprise Community Social Service Block Grant (EZ/EC SSBG) funds.

§ 25.3 Definitions.

As used in this part—*Applicant* means the lead entity that has prepared and will implement the community's strategic plan, pursuant to the provisions of § 25.200(c) of this part, for comprehensive economic, human, community, and physical development within the area; such an entity may include, but is not limited to, state governments, local governments, regional planning agencies, non-profit organizations, community-based organizations, or a partnership of community members and other entities.

Designation means the process by which the Secretary designates rural areas as Empowerment Zones or Enterprise Communities eligible for tax incentives and credits established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*), EZ/EC Social Service Block Grants as established by the Department of Health and Human Services, and for special consideration for programs of Federal assistance.

Empowerment Zone means a rural area so designated by the Secretary pursuant to this part. Up to three such Zones may be designated.

Enterprise Community means a rural area so designated by the Secretary pursuant to this part. Up to 30 such Communities may be designated.

Indian reservation means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)) or section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions which is recognized by the Secretary.

Nominated area means an area which is nominated by one or more local governments and the State or States in which it is located for designation pursuant to this part.

Population census tract means a census tract, or, if census tracts are not defined for the area, a block numbering area.

Poverty means the number of persons listed as being in poverty in the 1990 Census.

Revocation of designation means the process by which the Secretary may revoke the designation of an area as an Empowerment Zone or Enterprise Community pursuant to § 25.403 of this part.

Rural area means any area defined pursuant to § 25.504 of this part.

Secretary means the Secretary of Agriculture.

State means any State in the United States.

Strategic plan means a strategy developed by the applicant, with the participation and commitment of local governments, State government(s), private sector, community members and others, pursuant to the provisions of § 25.200(c) of this part. The plan must include written commitments from the local governments and State(s) that they will adhere to the strategy.

USDA means the U.S. Department of Agriculture.

§ 25.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants in accordance with § 25.200 of this part. The Secretary will designate up to three rural Empowerment Zones and up to 30 rural Enterprise Communities.

(b) *Period of designation.* The designation of a rural area as an Empowerment Zone or Enterprise Community shall remain in full effect during the period beginning on the date of designation and ending on the earliest of:

(1) The close of the tenth calendar year beginning on or after the date of designation;

(2) The termination date designated by the State and local governments in their application for nomination; or

(3) The date the Secretary revokes or modifies the designation, in accordance with § 25.402 or § 25.403 of this part.

§ 25.5 Waivers.

The Secretary may waive any provision of this part in any particular case subject only to statutory limitations, for good cause, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

Subpart B—Area Requirements

§ 25.100 Eligibility requirements and data usage.

Eligibility criteria. A nominated rural area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population of 30,000;

(b) Is one of pervasive poverty, unemployment, and general distress, as described in § 25.102 of this part;

(c) Does not exceed one thousand square miles in total land area;

(d) Be located entirely within no more than three contiguous States; if it is located in more than one State, the area must have one continuous boundary; if located in only one State, the area may consist of up to three noncontiguous parcels;

(e) Is located entirely within the jurisdiction of the unit or units of general local government making the nomination;

(f) Does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the individual poverty rate for each population census tract in the district is not less than 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community; and

(g) Does not include any area within an Indian reservation.

§ 25.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to the criteria described in § 25.102 of this part shall be based on the 1990 Census, and from information published by the Bureau of the Census and the Bureau of Labor Statistics. The data shall be comparable in point or period of time and methodology employed.

(b) *Use of statistics on boundaries.* The boundary of a rural area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of census tracts, or, where tracts are not defined, with block numbering areas.

§ 25.102 Tests of pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Conditions of poverty must be reasonably distributed throughout the entire nominated area. The degree of poverty shall be demonstrated by citing available statistics on low-income population and levels of public assistance. Poverty is demonstrated by poverty data from the 1990 census.

(b) *Unemployment.* The degree of unemployment shall be demonstrated by the provision of information on the number of persons unemployed, underemployed (those with only a seasonal or part-time job) or discouraged workers (those capable of working but who have dropped out of the labor market—hence are not counted as unemployed), increase in unemployment rate, job loss, plant or military base closing, or other relevant unemployment indicators having a direct effect on the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, per capita property tax base, average years of school completed; outmigration and population decline from 1980–1990; and a high or rising incidence of crime, narcotics use, abandoned housing, deteriorated infrastructure, school dropouts and illiteracy are examples of appropriate indicators of general distress. The data and methods used to produce such indicators that are used to describe general distress must all be stated.

§ 25.103 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following criteria:

(1) In each census tract within a nominated area, the poverty rate shall be not less than 20 percent; and

(2) For at least 90 percent of the population census tracts within the nominated area, the poverty rate shall not be less than 25 percent; and

(3) For at least 50 percent of the population census tracts within the nominated area, the poverty rate shall be not less than 35 percent.

(b) *Special rules relating to the determination of poverty rate.*

(1) *Census tracts with no population.* Census tracts with no population shall be treated as having a poverty rate that meets the standard of paragraphs (a)(1) and ((a))(2) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(3) of this section.

(2) *Census tracts with populations of less than 2,000.* A population census tract with a population of less than 2,000 shall be treated as having a poverty rate that meets the requirements of paragraphs (a)(1) and (a)(2) of this section if more than 75 percent of the tract is zoned for commercial or industrial use.

(3) *Adjustment of poverty rates for Enterprise Communities.* For Enterprise Communities only, the Secretary has the discretion to reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the census tracts, or, if fewer, five

population census tracts in the nominated area:

(i) The 20 percent threshold in paragraph (a)(1) of this section;

(ii) The 25 percent threshold in paragraph (a)(2) of this section; and

(iii) The 35 percent threshold in paragraph (a)(3) of this section;

Provided that, the Secretary may in the alternative reduce the 35 percent threshold by 10 percentage points for three population census tracts.

(4) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percentage point or more up to the next highest whole percentage point figure.

(c) *Noncontiguous areas.* There can be no more than 3 noncontiguous areas if the nominated area is located within one state; noncontiguous areas are not allowed in the multistate areas. Each such parcel must separately meet the poverty criteria set forth in this section.

(d) *Area not within census tracts.* In the case of an area that does not have population census tracts, the block numbering area shall be used for purposes of determining poverty rates.

Subpart C—Nomination Procedure

§ 25.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the State or States in which an area is located must nominate such area for designation as an Empowerment Zone or Enterprise Community; if:

(1) The rural area meets the requirements for eligibility described in § 25.100 and § 25.103 of this part;

(2) The rural area is entirely within the jurisdiction of the nominating State or States and local government(s); such governments must have the authority to nominate the area for designation and provide written assurances satisfactory to the Secretary that the strategic plan described in paragraph (c) of this section will be implemented;

(3) All information furnished by the nominating State(s) and local government(s) is determined by the Secretary to be reasonably accurate; and

(4) The State(s) and local government(s) certify that no portion of the area nominated is already included in an Empowerment Zone or Enterprise Community under this Act or in an area otherwise nominated to be designated under this section.

(b) *Nomination for designation.* No rural area may be considered for designation pursuant to subpart D of this part unless the application for designation:

(1) Demonstrates that the nominated rural areas satisfies the eligibility criteria set forth at § 25.100 of this part;

(2) Includes a strategic plan, as described in paragraph (c) of this section; and

(3) Includes such other information as may be required by USDA in a Notice Inviting Applications, to be published in the **Federal Register.**

(c) *Strategic plan.* Each application for designation must be accompanied by a strategic plan, which must be developed in accordance with four key principles that will be utilized to evaluate the plan. These key principles are:

(1) Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, and training for jobs that offer upward mobility;

(2) Sustainable community development, to advance the creation of liveable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development;

(3) Community-based partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning, and other community institutions and individual citizens; and

(4) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(d) *Elements of strategic plan.* The strategic plan should:

(1) Indicate and briefly describe the specific groups, organizations, and individuals participating in its production, and describe the history of these groups in the community;

(2) Explain how participants were selected and provide evidence that the participants, taken as a whole, are broadly representative of the entire community;

(3) Describe the role of the participants in the creation and development of the plan and indicate how they will participate in its implementation;

(4) Identify two or three topics addressed in the plan that caused the most serious disagreements among participants and describe how those disagreements were resolved;

(5) Explain how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provide evidence that key participants have the capacity to implement the plan;

(7) Provide a brief explanation of the community's vision for revitalizing the area;

(8) Explain how the vision creates economic opportunity, encourage self-sufficiency and promotes community development;

(9) Identify key community goals and the barriers that restrict the community from achieving these goals, including a description of poverty and general distress, barriers to economic opportunity and development, and barriers to human development;

(10) Discuss how the vision is related to the assets and needs of the area as well as to the surrounding community;

(11) Describe the ways in which the community's approaches to economic development, social/human services, transportation, housing, community development, public safety, drug abuse prevention and educational and environmental concerns will be addressed in a coordinated fashion; and explain how these linkages support the community's vision;

(12) Indicate how EZ/EC SSBG funds for the designated Empowerment Zone or Enterprise Community will be utilized.

(i) In doing so, the Strategic Plan shall provide the following information:

(A) A commitment by the applicant, as well as by the State government(s), that the EZ/EC SSBG funds will be used to supplement, not replace, other Federal or non-Federal funds for services or activities eligible under the SSBG program;

(B) A description of the entities that will administer the EZ/EC SSBG funds;

(C) A certification by such entities that they will provide periodic reports on the use of the EZ/EC SSBG funds; and

(D) A detailed description of the activities to be financed with the EZ/EC SSBG funds and how such funds will be allocated.

(ii) The EZ/EC SSBG funds may be used to achieve or maintain the following goals, through undertaking one of the below specified program options:

(A) The goal of economic self-support to prevent, reduce or eliminate

dependencies, through one of the following program options:

(*1*) Funding community and economic development services focused on disadvantaged adults and youths, including skills training, transportation services and job, housing, business and financial management counseling;

(*2*) Supporting programs that promote home ownership, education or other routes to economic independence for low-income families, youth and other individuals;

(*3*) Assisting in the provision of emergency and transitional shelter for disadvantaged families, youth and other individuals;

(B) The goal of self-sufficiency, including reduction or prevention of dependencies, through one of the following program options:

(*1*) Providing assistance to non-profit organizations and/or community and junior colleges that provide disadvantaged individuals with opportunities for short-term training courses in entrepreneurial, self employment and other skills that promote individual self-sufficiency, and the interest of the community;

(*2*) Funding programs to provide training and employment for disadvantaged adults and youths in construction, rehabilitation or improvement of affordable housing, public infrastructure and community facilities; and,

(C) The goal of prevention or amelioration of the neglect, abuse, or exploitation of children and/or adults unable to protect themselves; and where appropriate the goal of preservation or rehabilitation of families, through one of the following program options:

(*1*) Providing support for residential or non-residential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women, mothers and their children;

(*2*) Establishing programs that provide activities after school hours, including keeping school buildings open during evenings and weekends for mentor and study programs.

(iii) If the applicant intends to use the EZ/EC SSBG funds for program options not included in paragraph (b) of this section, the strategic plan must indicate how the proposed activities meet the goals set forth in paragraph (b) of this section, and the reasons any approved program options were not pursued.

(iv) To the extent that the EZ/EC SSBG funds are used for the program options included in paragraph (b) of this section, the applicant may use EZ/EC SSBG funds for the following activities, in addition to those activities permitted by section 2005 of the Social Security Act:

(A) To purchase or improve land or facilities;

(B) To make cash payments to individuals for subsistence or room and board;

(C) To make wage payments to individuals as a social service;

(D) To make cash payments for medical care; and

(E) To provide social services to institutionalized persons.

(v) The State must obligate the EZ/EC SSBG funds to the applicant in accordance with the Strategic Plan within 2 years from the date of designation of the Empowerment Zone or Enterprise Community.

(vi) The Strategic Plan must indicate how the EZ/EC SSBG funds will be invested and used for the 10-year period of designation. The EZ/EC SSBG funds may be used to promote economic independence for low-income residents, such as capitalizing revolving or micro-enterprise loan funds for the benefit of residents. The EZ/EC SSBG funds may also be used to create jobs and promote economic opportunity for low-income families and individuals through matching grants, loans, or investments in community development financial institutions.

(13) Indicate how tax benefits for designated Zones and Communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(14) Indicate a level of commitment necessary to ensure that these resources will be available to the area upon designation;

(15) Identify the Federal resources applied for or for which applications are planned;

(16) Identify private resources and support, including assistance from businesses, non-profit organizations, and foundations, which are available to be leveraged with public resources; and provide assurances that these resources will be made available to the area upon designation.

(17) Identify changes requested in Federal rules and regulations necessary to implement the plan, including specific paperwork or other Federal program requirements that must be altered to permit effective implementation of the strategic plan;

(18) Identify specific regulatory and other impediments to implementing the strategic plan for which waivers are requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes;

(19) Demonstrate how State and local governments will reinvent themselves to help implement the plan, by identifying changes that will be made in State and local organizations, processes and procedures, including laws and ordinances;

(20) Explain how different agencies in State and local governments will work together in new responsive ways to implement the strategic plan;

(21) Identify the specific tasks necessary to implement the plan;

(22) Describe the partnerships that will be established to carry out the plan;

(23) Explain how the plan will be regularly revised to reflect new information and opportunities; and

(24) Identify baselines, benchmarks and goals that will be used in evaluating performance in implementing the plan.

(e) *Prohibition against business relocation.* The strategic plan may not include any action to assist any establishment in relocating from an area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted, if:

(1) The establishment of a new branch affiliate or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(f) *Implementation of strategic plan.* The strategic plan may be implemented by the State government(s), local governments, regional planning agencies, non-profit organizations, community-based organizations, and/or by other nongovernmental entities. Activities included in the plan may be funded from any resource, Federal, State, local, or private, which agrees to provide assistance to the nominated area.

(g) *Elements of the strategic plan.* A strategic plan may include, but is not limited to, activities that address:

(1) Economic problems, through measures designed to create employment opportunities; support business startup or expansion; or development of community institutions;

(2) Human concerns, through the provision of social services, such as rehabilitation and treatment programs or the provision of training, education or other services within the affected area;

(3) Community needs, such as the expansion of housing stock and homeownership opportunities, efforts to reduce homelessness, to promote fair housing and equal opportunity, to reduce and prevent crime and improve security in the area; and

(4) Physical improvements, such as the provision or improvement of public infrastructure, or the provision or improvement of recreational, transportation, or other public services within the affected area.

§ 25.201 Evaluating the strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated rural areas described in § 25.301 of this part. On the basis of this evaluation, USDA may request additional information pertaining to the plan and the proposed area and may, as part of that request, suggest modifications to the plan, proposed area, or term that would enhance its effectiveness. The effectiveness of the strategic plan will be determined in accordance with the four key principles set forth in § 25.200(c) of this part. USDA will review each plan submitted in terms of the four equally weighted key principles, and of such other elements of these key principles as are appropriate to address the opportunities and problems of each nominated area, which may include:

(a) *Economic opportunity.* The extent to which businesses, jobs and entrepreneurship will increase within the Zone or Community;

(2) The extent to which residents will achieve a real economic stake in the Zone or Community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic and community development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire area and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the Zone or Community interrelates with the broader regional economies; and

(6) The extent to which lending and investment opportunities will increase within the Zone or Community through the establishment of mechanisms to encourage community investment and to create new economic growth.

(b) *Sustainable community development.* (1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating localities and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the Zone or Community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection and the vitality of life of the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner consistent that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted, and the extent to which young people will be provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(7) *Education goals.* The extent to which schools, religious organizations, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug abuse.* The extent to which the plan addresses levels of drug abuse and drug-related activity through the expansion of drug treatment services, drug law enforcement initiatives, and community-based drug abuse education programs; and

(10) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated Zone or Community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, national orgin, gender, handicap or age in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or the forms of compensation, or use of facilities. Applicants must comply with the provisions of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as implemented by USDA.

(c) *Community-based partnerships*—(1) *Community partners.* The extent to which residents of the nominated area have participated in the development of the strategic plan and their commitment to implementing it. The extent to which community-based organizations in the nominated area have participated in the development of the plan, and their record of success measured by their achievements and support for undertakings within the nominated area;

(2) *Private and non-profit organizations as partners.* The extent to which partnership arrangements include commitments from private and non-profit organizations, including corporations, utilities, banks and other financial institutions, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which State(s) and local governments are committed to providing support to the strategic plan, including their commitment to "reinventing" their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the Zone or Community's designation.

(d) *Strategic vision for change*—(1) *Goals and coordinated strategy.* The extent to which The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets; and

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an ongoing process for adjustments, corrections and building on what works.

§ 25.202 Submission of nominations for designation.

(a) *General.* A separate nomination for designation as an Empowerment Zone and/or Enterprise Community must be submitted for each rural area for which such designation is requested. The nomination shall be submitted in a form to be prescribed by USDA in the Notice Inviting Applications published in the **Federal Register**, and must contain complete and accurate information.

(b) *Certifications.* Certifications must be submitted by the State(s) and local government(s) requesting designation stating that:

(1) The nominated area satisfies the boundary tests of § 25.100(d) of this part;

(2) The nominated area is one of pervasive poverty, unemployment, and general distress, as prescribed by § 25.102 of this part;

(3) The nominated area satisfies the poverty rate criteria set forth in § 25.103 of this part;

(4) The nominated rural area contains no portion of an area that is either already designated as an Empowerment Zone and/or Enterprise Community or is otherwise included in any other area nominated for designation as an Empowerment Zone and/or Enterprise Community;

(5) Each nominating governmental entity has the authority to:

(i) Nominate the rural area for designation as an Empowerment Zone and/or Enterprise Community;

(ii) Make the State and local commitments required by § 25.200(d) of this part; and

(iii) Provide written assurances satisfactory to the Secretary that these commitments will be met;

(6) Provide assurances the amounts provided to the State for the area under section 2007 of title XX of the Social Security Act will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of section 2007;

(7) Provide that the nominating governments or corporations agree to make available all information requested by USDA to aid in the evaluation of progress in implementing the strategic plan and reporting on the use of Empowerment Zone/Enterprise Community Social Service Block Grant funds; and

(8) Provide assurances that the nominating State(s) agrees to distribute the Empowerment Zone/Enterprise Community Social Service Block Grant funds in accordance with the strategic plan submitted for the designated Zone or Community.

(c) *Maps and area description.* Maps and general description of the nominated area shall accompany the nomination request.

Subpart D—Designation Process

§ 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of application as Empowerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the **Federal Register**.

(b) *Acceptance for processing.* USDA will accept for processing those applications as Empowerment Zones or Enterprise Communities which USDA determines have met the criteria required under this part. USDA will notify the State(s) and local government(s) whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(1) The application as an Empowerment Zone or Enterprise Community must be received by USDA on or before the close of business on the date established by the Notice Inviting Applications published in the **Federal Register**. The applications must be complete and must be accompanied by a strategic plan, as required by § 25.200(c) and the certifications required by § 25.202(b).

(2) The application as an Empowerment Zone or Enterprise Community must be complete and must be accompanied by a strategic plan, as required by § 25.200(c) of this part, and the certifications required by § 25.202(b) of this part.

(c) *Evaluation of applications.* In the process of reviewing each application accepted for processing, USDA may undertake a site visit(s) to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated rural areas, and/or period during which designation is in effect.* Subject to the limitations imposed by § 25.100 of this part, USDA may request additional information pertaining to the plan and proposed area and may, as a part of that request, suggest modifications to the plan that would enhance its effectiveness.

(e) *Publication of designations.* Final determination of the boundaries of areas and the term for which the designations will remain in effect will be made by the Secretary. Announcements of those nominated areas designated as Empowerment Zones or Enterprise Communities will be made by publication of a Notice in the **Federal Register**.

§ 25.301 Selection factors for designation of nominated rural areas.

In choosing among nominated rural ares eligible for designation, the Secretary shall consider:

(a) The effectiveness of the strategic plan, in accordance with the key principles set out in § 25.201.

(b) The effectiveness of the assurances made pursuant to § 25.200(a)(2) that the strategic plan will be implemented.

(c) The extent to which an application proposes activities that are creative and innovative.

(d) Such other factors as established by the Secretary, which include the degree of need demonstrated by the nominated area for assistance under this part and the diversity within and among the nominated areas. If other factors are established by USDA, a **Federal Register** Notice will be published identifying such factors, along with an extension of the application due date if necessary.

§ 25.302 Number of Rural Empowerment Zones and Enterprise Communities.

The Secretary may designate up to 3 rural Empowerment Zones and up to thirty rural Enterprise Communities.

Subpart E—Post-Designation Requirements

§ 25.400 Reporting.

USDA will require periodic reports for the Empowerment Zones and Enterprise Communities designated pursuant to this part. These reports will identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones and Enterprise Communities as USDA shall request from time to time shall be

submitted promptly. On the basis of this information and of on-site reviews, USDA will prepare and issue periodic reports on the effectiveness of the Empowerment Zones/Enterprise Communities Program.

§ 25.401 Periodic performance reviews.

USDA will regularly evaluate the progress in implementing the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and using other information submitted. USDA may also commission evaluations of the Empowerment Zone program as a whole by an important third party. Where not prevented by State law, nominating State governments must provide the timely release of data requested by USDA for the purposes of monitoring and assisting the success of Empowerment Zones and Enterprise Communities.

§ 25.402 Validation of designation.

(a) *Reevaluation of designations.* On the basis of the performance review described in § 25.401 of this part, and subject to the provisions relating to the revocation of designation appearing at § 25.403 of this part, USDA will make findings as to the continuing eligibility for the validity of the designation of any Empowerment Zone or Enterprise Community. Determinations of whether any designated Empowerment Zone or Enterprise Community remains in good standing shall be promptly communicated to all Federal agencies providing assistance or administering programs under which assistance can be made available in such Zone or Community.

(b) *Modification of designation.* Based on a rural Zone or Community's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation appearing at § 25.403 of this part and the requirements as to the number, maximum population and other characteristics of rural Empowerment Zones set forth in § 25.100 of this part, the Secretary may modify designations by reclassifying rural Empowerment Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

§ 25.403 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of a rural area as an Empowerment Zone or Enterprise Community if the Secretary determines on the basis of the periodic monitoring described in § 25.401 of this part, that the applicant of the State(s) or local government(s) in which the rural area is located:

(1) Has modified the boundaries of the area;

(2) Has failed to make satisfactory progress in achieving the benchmarks set forth in the strategic plan; or

(3) Has not complied substantially with the strategic plan.

(b) *Warning letter.* Before revoking the designation of a rural area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the applicant and the nominating State(s) and local government(s):

(1) Advising that the Secretary has determined that the applicant and/or the nominating local government(s) and/or State(s) has:

(i) modified the boundaries of the area; or

(ii) is not complying substantially with, or has failed to make satisfactory progress in achieving the benchmarks set forth in the strategic plan prepared pursuant to § 25.200(d) of this part; and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* After allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination pursuant to paragraph (a) of this section, the Secretary may issue a final notice of revocation of the designation of the rural area as an Empowerment Zone or Enterprise Community.

(d) *Notice to affected Federal agencies.* USDA will notify all affected Federal agencies providing assistance in a rural Empowerment Zone or Enterprise Community of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to § 25.402 of this part.

Subpart F—Special Rules

§ 25.500 Indian reservations.

No rural Empowerment Zone or Enterprise Community may include any area within an Indian reservation.

§ 25.501 Governments.

If more than one State or local government seeks to nominate an area under this part, any reference to or requirement of this part shall apply to all such governments.

§ 25.502 Nominations by economic development corporations.

Any rural area nominated by an economic development corporation chartered by a State and qualified to do business in the state in which it is located, shall be treated as nominated by a State and local governments.

§ 25.503 Use of census data.

Population and poverty rate data shall be determined by the 1990 Census Data.

§ 25.504 Rural areas.

(a) *What constitutes "rural".* A rural area may consist of any area that lies outside the boundaries of a Metropolitan Area, as designated by the Office of Management and Budget, or, as an area that is primarily rural and has at least 50 percent of the population of the nominated area residing outside of a Metropolitan Area. For the purpose of this section, the 1993 Census Bureau definition of Metropolitan Area is applied.

(b) *Exceptions to the definition.* On a case by case basis, the Secretary will grant requests for waiver from the above definition of "rural" upon a showing of good cause. Applicants seeking to apply for a rural designation who do not satisfy the above subsection, must submit a request for waiver in writing to the Rural Development Administration, Empowerment Zone Office, Department of Agriculture, AG Box 3202, 14th Street and Independence Avenue SW., Washington, DC 20250–3200. Requests must include:

(1) The name, address and daytime phone number of the contact person for the applicant seeking the waiver; and

(2) Sufficient information regarding the area that would support the infrequent exception from the definition.

(c) *The waiver process.* The Secretary, in consultation with the Department of Commerce, will have discretion to permit rural applications for communities that do not meet the above rural criteria.

Dated: January 12, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–1147 Filed 1–14–94; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

RIN 0503–AA09

Notice Inviting Applications for Designation of Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Notice inviting applications.

SUMMARY: This Notice invites applications from States and local governments nominating rural areas for designation as Empowerment Zones ("EZ") and Enterprise Communities ("EC"), as those terms are defined in this Notice and in an interim rule published elsewhere in today's **Federal Register**. The interim rule provides the guidance necessary for completion and submission of the applications.

DATES: Application due date: The deadline for receipt of an application will be 4 p.m. Eastern Daylight Savings Time, Thursday, June 30, 1994. Applications received after this date will not be considered. Applications may not be submitted prior to 30 days from the date of publication of the interim rule.

ADDRESSES: Applications may be obtained from EZ/EC State Contacts located at the Farmers Home Administration (FmHA) State or District Offices listed in the appendix to this Notice or by sending an Internet Mail message to: info@ezec.usda.gov. to obtain the application.

FOR FURTHER INFORMATION CONTACT: Beverly C. Gillot, Strategy Development Staff, Rural Development Administration, room 5405, Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–3200, telephone 202–690–1045 (this is not a toll free number), or by sending an Internet Mail message to: info@ezec.usda.gov to obtain information.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The burden for collecting the required information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Jack Holston, FmHA Clearance Officer, Farmers Home Administration, AG Box 0743, Department of Agriculture, Washington, DC 20250–3200; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, Washington, DC 20503.

I. Background

One of the core items of President Clinton's economic proposals is the need to empower America's distressed rural and urban communities. His Empowerment Zone proposal represents a new approach to the problems of distressed communities. It emphasizes a bottom-up community based strategy rather than the traditional top-down bureaucratic approach. It is a strategy to address economic, human, community, and physical development problems and opportunities in a comprehensive fashion.

Title XIII of the Omnibus Reconciliation Act of 1993, enacted to implement the President's vision, authorizes the Secretary of Department of Agriculture to designate up to three Empowerment Zones and up to 30 Enterprise Communities in rural areas. (Unless otherwise noted, all references in this Notice to Empowerment Zones also include Enterprise Communities.) This Notice invites applications from State and local governments, regional planning agencies, non-profit organizations, community-based organizations, or other locally-based organizations for the Secretarial designations as Empowerment Zones or Enterprise Communities.

The program is intended to combine the resources of the Federal Government with those of State and local governments, educational institutions and the private and non-profit sectors to implement community-developed strategic plans for economic development. The Federal Government has taken steps to coordinate Federal assistance in support of the Zones, including expedited processing, priority funding, and waiver of regulations. To that end, President Clinton has issued an Executive Order that creates a Community Enterprise Board chaired by Vice President Al Gore to ensure the success of the Empowerment Zone initiative.

II. Eligibility

The statute specifies certain criteria that must apply in order for an area to be eligible for Empowerment Zone designation, including geographic size, population, poverty rate by census tract (or by block numbering areas when the community is not delineated by census tracts), pervasive poverty, unemployment, and general distress of the area. The details of these requirements are described in the interim rule governing the program published elsewhere in today's **Federal Register**.

This information must be provided in the application. USDA will accept certifications of the data by the State and local governments, subject to further verification of the data prior to designation as a Zone.

III. Designation Factors

The statute specifies three factors to be considered by the Secretary in designating Empowerment Zones: (1) The effectiveness of the Strategic Plan; (2) the effectiveness of the assurances provided in support of the Strategic Plan; and (3) other criteria to be specified by the Secretary. Each of these factors is discussed in greater detail in the interim rule (The Strategic Plan is described in the interim rule at 7 CFR 25.200(c)).

IV. Timing and Location of Application Submissions

Applications may be obtained from any FmHA State Office and from Rural EZ/EC State Contacts (see Appendix A) or by sending an Internet Mail message to: info@ezec.usda.gov. An application may be submitted 30 days from the date of publication of the interim rule, which governs the Empowerment Zone program. The deadline for receipt of the application will be 4 p.m. Eastern Daylight Savings Time, Thursday, June 30, 1994. Applications received after that date and time will not be accepted, and will be returned to the sender. As the applications require certifications from the State and local governments, we cannot accept applications sent by FAX or through the Internet system. The original application and one (1) copy should be sent to: US Department of Agriculture, Rural Development Administration, EZ/EC Team, room 5405, 14th Street and Independence Avenue SW., Washington, DC 20250–3200.

Applicants will be notified of an incomplete application. Provided that the application is received at the above address with sufficient time before the deadline, applicant will be given an opportunity to provide the missing information to USDA.

V. Notice of Intent to Apply

Applicants should fill out and mail a Notice of Intent to Apply. The form of notice is located at the end of the Empowerment Zone Application (see Appendix B), or may be obtained by sending an Internet Mail message to: info@ezec.usda.gov to obtain the notice. Applicants may wish to submit the form in order to be placed on the Empowerment Zone and Enterprise Community mailing list. While the notice is not mandatory for participation in the program, USDA encourages the submission of the notice as it will permit the Department to provide applicants with updated information on program requirements as well as information on technical assistance.

VI. Miscellaneous

Empowerment Zone designation does not constitute a Federal action for provisions of the Uniform Relocation Act. However, any activity constituting a Federal action that may result from such a designation may be subject to the provision of this Act, as well as any other statutory or regulatory provisions governing the particular Federal action.

VII. Other Matters

Paperwork Reduction Act

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.** Information on the estimated public reporting burden is provided in the preamble of the interim rule implementing this program (7 CFR part 25) published elsewhere in today's **Federal Register.**

Dated: January 12, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

Appendix A: EZ/EC State Contacts

Alabama

Richard Jones, FmHA State Office, 4121 Carmichael Road, Suite 601, Montgomery AL 36106–3683, Ph: 205–279–3400, Fax: 205–279–3484

Alaska

Darwin Betts, FmHA State Office, 634 S. Bailey, Suite 103, Palmer AK 99645, Ph: 907–745–2176, Fax: 907–745–5398

Arkansas

Shirley Tucker, FmHA State Office, 700 W. Capitol St., P.O. Box 2778, Little Rock AR 72203, Ph: 501–324–6281, Fax: 501–324–6346

Arizona

Clark Dierks, FmHA State Office, 3003 N Central Ave, Suite 900, Phoenix AZ 85012, Ph: 602–280–8700, Fax: 602–280–8770

California

Paula Galvan, FmHA State Office, 194 West Main Street, Suite F, Woodland CA 95695–2915, Ph: 916–668–2000, Fax: 916–668–2055

Colorado

Judy Jacklich, 655 Parfet Street, Room E 100, Lakewood CO 80215, Ph: 303–236–2806, Fax: 303–236–2854

Delaware

James Waters, 4611 So Dupont Highway, PO Box 400, Camden DE 19934–9998, Ph: 302–697–4324, Fax: 302–697–4388

Florida

Jeanie Graham, 4440 N.W. 25th Pl, Gainesville FL 32614–7010, Ph: 904–338–3400, Fax: 904–338–3405

Georgia

Eugene Carr, 355 E. Hancock Ave., Stephens Federal Bldg., Athens GA 30610, Ph: 706–546–2165, Fax: 706–546–2152

Hawaii

Ted Matsuo, 154 Waianuenue Ave, Federal Building Rm 311, Hilo HI 89701, Ph: 808–933–3009, Fax: 808–935–1590

Idaho

Larry Spindler, 3232 Elder St., Boise ID 83705, Ph: 208–334–1836, Fax: 208–334–1712

Illinois

Charles Specht, 1817 S Neil Street, Suite 103, Champaign IL 61820, Ph: 217–398–5235, Fax: 217–398–5337

Indiana

Joseph Steele, 5975 Lakeside Blvd., Indianapolis IN 46278, Ph: 317–290–3109, Fax: 317–290–3127

Iowa

Dorman Otte, 210 Walnut Street, Federal Bldg Rm 873, Des Moines IA 50309, Ph: 515–284–4152, Fax: 515–284–4859

Kansas

William Kirk, 1200 SW Executive Dr, P.O. Box 4653, Topeka KS 66604, Ph: 913–271–2708, Fax: 913–271–2700

Kentucky

Robert Letton, FmHA State Office, 771 Corporate Plaza, Suite 200, Lexington KY 40503, Ph: 606–224–7336, Fax: 606–224–7340

Louisiana

Michael Taylor, RDA Delta Region, 1221 Washington Street, Vicksburg, MS 39180, Ph: 601–631–3920, Fax: 601–631–3931

Maine

Daniel E. McAllister, Jr., FmHA State Office, 444 Stillwater Avenue, Suite 2, P.O. Box 405, Bangor ME 04402–0405, Ph: 207–990–9125, Fax: 207–990–9170

Massachusetts

Craig L. Dore, FmHA State Office, 451 West Street, Amherst MA 01002, Ph: 413–253–4340, Fax: 413–253–4347

Michigan

James Trumbell, FmHA State Office, 3001 Coolidge Road, Suite 200, East Lansing MI 48823, Ph: 517–337–6635, Fax: 517–337–6913

Minnesota

Deborah Slipek, FmHA State Office, 410 Farm Credit Services Bldg, 375 Jackson Street, St. Paul MN 55101–1853, Ph: 612–290–3866, Fax: 612–290–3834

Mississippi

Jane Jones, FmHA State Office, Suite 831, Federal Bldg, 100 W Capital St, Jackson MS 39269, Ph: 601–965–5460, Fax: 601–965–5384

Mississippi (2)

Bettye Oliver, RDA Delta Region, FmHA State Office, Suite 831, Federal Building, 100 W Capital Street, Jackson MS 39269, Ph: 601–965–4318, Fax: 601–965–5384

Missouri

Eldrid "Pete" Easterhaus, FmHA State Office, 601 Business Loop, 70W, Parkade Cr, Ste 235, Columbia MO 65203, Ph: 314–876–0995, Fax: 314–876–0977

Montana

Mitchel Copp, FmHA State Office, 900 Technology Blvd, Suite B, P.O. Box 850, Bozeman MT 59771, Ph: 406–585–2520, Fax: 406–585–2565

Nebraska

Richard L. Bolte, FmHA State Office, Federal Building, Rm 308, 100 Centennial Mall N, Lincoln NE 68508, Ph: 402–437–5556, Fax: 402–437–5408

New Jersey

Mike P. Kelsey, FmHA State Office, Tarnsfield Plaza, #22, Woodlane Road, Mt. Holly NJ 08060, Ph: 609–265–3640, Fax: 609–265–3651

New Mexico

Bill Culberston, FmHA State Office, Plaza del Comercio, 1570 Pacheco St B, Santa Fe NM 87501, Ph: 505–984–8084, Fax: 505–984–8078

New York

Lowell J. Gibson, FmHA State Office, James M. Hanley Fed. Bldg, Room 871, PO Box 7318, Syracuse NY 13261–7318, Ph: 315–423–5298, Fax: 315–423–5722

North Carolina

Debra Nesbitt, FmHA State Office, 4405 Bland Rd, Suite 260, Raleigh NC 27609, Ph: 919–790–2731, Fax: 919–790–2738

North Dakota

DeLayne Brown, FmHA State Office, Federal Building, Room 221, 220 East Rosser, Bismarck ND 58502, Ph: 701–250–4781, Fax: 701–250–4670

Ohio

Allen L. Turnbull, FmHA State Office, Federal Building Rm 740, 200 North High Street, Columbus OH 43215, Ph: 614–469–5400, Fax: 614–469–5802

Oklahoma

Christie Woolsey, FmHA State Office, 100 USDA, Suite 108, Stillwater OK 74074–2654, Ph: 405–624–4250, Fax: 405–624–4278

Oregon

Jerry W. Sheridan, FmHA State Office, Federal Bldg., Rm 1590, 1220 S.W. 3rd Ave., Portland OR 97204, Ph: 503–326–2735, Fax: 503–326–5898

Pennsylvania

Duane Tuttle, FmHA State Office, 1 Credit Union Pl, Room 330, Harrisburg PA 17110–2996, Ph: 717–782–4477, Fax: 717–782–4878

South Carolina

R. Gregg White, RDA Southeast Region, 280 Beaufort Street, NE, Aiken SC 29801, Ph: 803–643–4214, Fax: 803–643–4245

South Dakota

Robert Bothwell, FmHA State Office, Federal Building, Rm 308, 200 Fourth Street, S.W., Huron SD 57350, Ph: 605–353–1474, Fax: 605–353–1220

Tennessee

John M. Dement, FmHA State Office, Suite 300, 3322 West End Ave, Nashville TN 37203–1071, Ph: 615–783–1341, Fax: 615–783–1301/1394

Texas

Lorraine Clements, FmHA Dist Office, P.O. Box 1115, Georgetown TX 78627, Ph: 512–863–6502, Fax: 512–869–0579

Utah

Duane A. Olson, FmHA State Office, Wallace F. Bennett Fed. Bldg, Rm 5438, 125 S State S, Salt Lake City UT 84138, Ph: 801–524–3244, Fax: 801–524–4406

Vermont

Burtt McIntire, FmHA State Office, City Center, 3rd Floor, 89 Main Street, Montpelier VT 05602, Ph: 802–828–6030, Fax: 802–828–6037

Virginia

Robert Boyd, FmHA State Office, 1606 Santa Rosa Road, Culpeper Building #238, Richmond VA 23229, Ph: 804–287–1601, Fax: 804–287–1721

Washington

Mary McBride, P.O. Box 2466, Olympia WA 98507, Ph: 206–534–9314, Fax 206–753–8082

Wisconsin

David Gibson, FmHA State Office, 4949 Kirschling Ct., Stevens Point WI 54481, Ph: 715–341–0023, Fax: 715–345–7669

West Virginia

Jenny Phillips, FmHA State Office, 75 High Street, Morgantown WV 26505–7500, Ph: 304–291–4791, Fax: 304–291–4032

Wyoming

Edward E. Chase, FmHA State Office, P.O. Box 820, Casper WY 82602, Ph: 307–261–5144, Fax: 307–261–5167

BILLING CODE 3410–01–M

Appendix B: Form of Notice of Intent

Notice of Intent to Participate

Empowerment Zone or Enterprise Community

This is notification to the:

☐ Department of Housing and Urban Development (for urban
Office of Planning and Development, CEE
Processing and Control Unit, Room 7255
451 7th Street, S.W.
Washington, D.C. 20410

or ☐ Department of Agriculture (for rural)
Rural Development Administration
EZ/EC Team, Ag Box 3202
14th & Independence Avenue, S.W.
Washington, D.C. 20250-3200

Name & Address of Participating Entity:

that the entity named here:
intends to participate in the nomination of an Empowerment Zone or Enterprise Community.

Contact & Phone No:

Check here if you are a: ☐ Nominating Entity

[FR Doc. 94–1148 Filed 1–14–94; 8:45 am]
BILLING CODE 3410–01–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 597

[Docket No. R–94–1702; FR–3580–I–01]

RIN 2506–AB65

Designation of Empowerment Zones and Enterprise Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements that portion of subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993) dealing with the designation of urban Empowerment Zones and Enterprise Communities. This rule authorizes the Secretary of Housing and Urban Development (HUD) to designate not more than six urban Empowerment Zones and not more than 65 urban Enterprise Communities based upon the effectiveness of the strategic plan submitted by a State or States and local government(s) nominating an area for designation.

The purpose of this program is to empower American communities and their residents to create jobs and opportunity, take effective action to solve difficult and pressing economic, human, community and physical development challenges of today, and to build for tomorrow as part of a Federal-State-local and private-sector partnership. Businesses are to be encouraged to invest in distressed areas, thereby creating jobs, and comprehensive local strategic plans are to be adopted and implemented, furthering community development and assisting in the revitalization of these areas.

DATES: *Effective date:* February 17, 1994, through January 18, 1995. *Comment due date:* February 17, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh St. SW., Washington, DC 20410–0500. Comments by facsimile (FAX) are not acceptable. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development, room 7136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2290; TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), approved, and assigned OMB Control Number 2506–0148.

I. Background

The Empowerment Zones program is a key step in rebuilding communities in America's poverty-stricken inner cities and rural heartland. It is designed to empower people and communities across the nation in developing and implementing strategic plans to create job opportunities and sustainable community development. The program combines tax benefits with substantial investment of Federal resources and enhanced coordination among Federal agencies. All communities which complete the nomination process will be strengthened by it, whether or not they are selected as Empowerment Zones or Enterprise Communities, as the Federal Government will work with applicants to overcome programmatic regulations and statutory impediments to encourage more effective economic, physical, environmental and community development activities.

All communities will gain by taking stock of their assets and problems, by creating a vision of a better future, and by structuring a plan for achieving it. Local partnerships among community residents, businesses, financial institutions, service providers, neighborhood associations and State and local governments can be formed or strengthened to support a plan for change by going through the application process. Communities will be afforded an opportunity to work with these new partners in the creation and implementation of a community-based strategic plan. Community Development Corporations nominated by the locality will be considered eligible for designation to receive tax preferred contributions from donors. Communities with innovative visions for change will be considered for requested waivers of Federal program regulations, flexible use of existing program funds, and cooperation in meeting essential mandates, even if they do not receive a designation. Communities may apply comprehensive strategic planning to their entire community anticipating proposed consolidation of planning requirements for four major formula grant programs administered by the Office of Community Planning and Development in HUD.

Enterprise Communities are eligible for new Tax-Exempt Facilities Bonds for certain private business activities. States with designated Enterprise Communities will receive approximately $3 million in Empowerment Zone/Enterprise Community Social Service Block Grant funds to pass through to each designated area for approved activities identified in their strategic plans. Enterprise Communities will receive special consideration in competition for funding under numerous Federal programs, including the new National Service and proposed Community Policing initiatives. The Federal Government will focus special attention on working cooperatively with designated Enterprise Communities to overcome regulatory impediments, to permit flexible use of existing Federal funds, and to assist these Communities in meeting essential mandates.

Empowerment Zones will receive all the benefits provided to Enterprise Communities and other communities with innovative visions for change. Empowerment Zones are awarded substantial Empowerment Zone/Enterprise Community Social Service Block Grant funds, in the amount of $100 million for each urban Zone. An Employer Wage Credit for Zone residents is extended to qualified employers engaged in trade or business, in designated Empowerment Zones. Businesses are afforded an increased deduction under section 179 of the Internal Revenue Code for qualified properties.

The urban part of the program will be administered by HUD as a Federal-State-local partnership, with a minimum of red tape associated with the application process. Communities must demonstrate the ability to design and implement an effective strategic plan for real opportunities for growth and revitalization, that deal with local problems in a comprehensive way and must demonstrate the capacity to carry out these plans. Development of an

effective plan must also involve the participation of the community affected by the nomination of the urban area, and of the private sector, acting in concert with the nominating entities. The plan should be developed in accordance with four key principles, which will serve as the basis for the key selection criteria that will be used to evaluate the plan. These principles are:

(1) Economic Opportunity, including job creation within the community and throughout the region, as well as entrepreneurial initiatives, small business expansion, and training for jobs that offer upward mobility;

(2) Sustainable Community Development, to advance the creation of liveable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development;

(3) Community-Based Partnerships, involving participation of all segments of the community, including the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning and other community institutions; and

(4) Strategic Vision for Change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

State and local governments may nominate distressed urban areas for designation as Empowerment Zones (which will also permit their consideration for designation as Enterprise Communities), or solely for designation as Enterprise Communities.

Title XIII of the Omnibus Budget Reconciliation Act of 1993 included Empowerment Zones and Enterprise Communities as a new program.

II. Program Description

General

Pursuant to title XIII of the Omnibus Budget Reconciliation Act of 1993, the Secretary of HUD may designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities. If six Empowerment Zones are designated in urban areas, no less than one shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than one shall be a nominated area which includes areas in two States and which Zone has a population of 50,000 or less. The Secretary of HUD will designate Empowerment Zones in urban areas in such a manner that the aggregate population of all such Zones does not exceed 750,000.

Eligibility

To be eligible for designation as an urban Empowerment Zone or Enterprise Community the statute prescribes that an area must:

(1) Have a maximum population which is the lesser of:

(a) 200,000, or

(b) The greater of 50,000, or ten percent of the population of the most populous city located within the nominated area;

(2) Be one of pervasive poverty, unemployment, and general distress;

(3) Not exceed twenty square miles in total land area;

(4) Demonstrate a poverty rate which is not less than:

(a) 20 percent in each census tract;

(b) 25 percent in 90 percent of the population census tracts within the nominated area;

(c) 35 percent for at least 50 percent of the population census tracts within the nominated area;

(5) Have a continuous boundary, or consist of not more than three noncontiguous parcels;

(6) Be located entirely within the jurisdiction of the unit or units of general local government making the nomination, and not be located in more than two contiguous States; and

(7) Not include any portion of a central business district unless the poverty rate for each population tract containing portions of the central business district is at least 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community.

Nomination Process

The law provides that one or more local governments and the State(s) in which a nominated urban area is located may jointly nominate the area for designation if:

(1) The area meets the eligibility requirements set forth in these rules;

(2) The urban area is within the jurisdiction of the local government(s) and the State(s);

(3) The local government(s) and State(s) provide assurances that the required strategic plan they adopt will be implemented;

(4) All information furnished by the nominating local government(s) and State(s) is determined by the Secretary of HUD to be reasonably accurate;

(5) The local government(s) and State(s) certify that no portion of a nominated urban area is already in a Federal Empowerment Zone or Enterprise Community or in an area otherwise nominated for designation; and

(6) The local government(s) and State(s) certify that they possess the legal authority to make the nomination.

The nomination must be accompanied by an application for designation, including a strategic plan, which:

(1) Indicates and briefly describes the specific groups, organizations and individuals participating in the production of the plan, and describes the history of these groups organizations in the community;

(2) Explains how participants were selected and provides evidence that the participants, taken as a whole, broadly represent the racial, cultural and economic diversity of the community;

(3) Describes the role of the participants in the creation, development and future implementation of the plan;

(4) Identifies two or three topics addressed in the plan that caused the most serious disagreements among participants and describes how those disagreements were resolved;

(5) Explains how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provides evidence that key participants have the capacity to implement the plan;

(7) Provides a brief explanation of the community's vision for revitalizing the area;

(8) Explains how the vision fulfills the key principles of creating economic opportunity, encouraging self-sufficiency and promoting sustainable community development;

(9) Identifies key needs of the area and the current barriers to achieving the vision for it, including a description of poverty and general distress, barriers to economic opportunity and development and barriers to human development;

(10) Discusses how the vision is related to the assets and needs of the area and its surroundings;

(11) Describes the ways in which the community's approaches to economic development, social/human services, transportation, housing, sustainable community development, public safety, drug abuse prevention, and educational and environmental concerns will be addressed in a coordinated fashion; and explains how these linkages support the community's vision.

The strategic plan must identify how government resources will be used to support the plan. Specifically, the plan must indicate:

(1) How Social Service Block Grant funds for designated Zones and Communities, tax benefits for designated Zones and Communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(2) The level of commitment necessary to ensure that these resources will be available to the area upon designation; and

(3) The Federal resources being applied for or for which applications are planned; and

(4) If you wish to be considered for the consolidated planning option, indicate how the strategic plan will apply to the entire locality and how the locality will spend CDBG and HOME funds.

The plan must identify private resources committed to its implementation, including:

(1) Private resources and support, including assistance from business, non-profit organizations and foundations, which are available to be leveraged with public resources; and

(2) Assurances that these resources will be made available to the area upon designation.

The plan must address changes needed in Federal rules and regulations necessary to implement the plan, including:

(1) Specific paperwork or other Federal program requirements that need to be altered to permit effective implementation of the strategic plan; and

(2) Specific regulatory and other impediments to implementing the strategic plan for which waivers are requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes.

The plan must demonstrate how State and local governments will reinvent themselves to help implement the plan, by:

(1) Identifying the changes that will be made in State and local organizations, processes and procedures, including laws and ordinances, to facilitate implementation of the plan; and

(2) Explaining how different agencies in State and local governments will work together in new responsive ways to implement the strategic plan.

The plan must provide details about the manner in which it will be implemented, and must indicate what benchmarks will be used to measure progress, by:

(1) Identifying the specific tasks necessary to implement the plan;

(2) Describing the partnerships that will be established to carry out the plan;

(3) Explaining how the strategic plan will be regularly revised to reflect new information and opportunities; and

(4) Identifying the benchmarks and goals that should be used in evaluating performance in implementing the plan.

III. Justification for Interim Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public comment is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public comment would be contrary to the public interest. Section 1391(c) of the legislation requires that designations be made only after 1993 and before 1996. Given the statutory mandate to make all designations within a two-year period, the extra time required to publish a proposed rule for a 60-day comment period before development of a final rule for effect would be contrary to congressional intent and the purpose of the legislation. The longer time period would unduly postpone an economic recovery for those communities and their residents for which this program is intended. Further, the Department finds that good cause exists in that prior public comment is unnecessary because the legislation being implemented by this rule is very prescriptive, with little room for discretion on the part of the Secretary.

The Department is interested, however, in the public reaction to the rule, and invites the public to comment. Since section 7(o) of the Department of Housing and Urban Development Act provides that no rule promulgated by the Department may become effective until 30 days after publication, and since section 1391(c) of the authorizing legislation requires that designations be made within a two-year period, the Department is limiting the comment period to 30 days to permit adequate time for review of public comments and development of a final rule.

The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. This "sunset" provision appears in § 597.1(c) of the rule, and provides that the rule will expire on a date 12 months from publication unless a final rule is published before that date.

IV. Notice

HUD is simultaneously publishing in today's **Federal Register** a Notice Inviting Applications that contains complete information on obtaining and submitting applications for nominating areas as Empowerment Zones and Enterprise Communities.

V. Other Matters

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), were approved, and assigned OMB Control Number 2506–0148. The following provisions of the rule have been determined by the Department to contain collection of information requirements:

Reference in rule	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
§ 597.200	300	1	300	50	15,000
§ 597.400	71	1	71	16	1,136
Total annual burden					16,136

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10278, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866, Regulatory Planning and Review

This rule was reviewed and approved by the Office of Management and Review as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities within the intent and purpose of that Act. The Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. To the extent that this rule affects those entities, its purpose is to reduce any disproportionate burden by providing for the waiver of regulations and by affording other incentives directed toward a positive economic impact. Therefore, no regulatory flexibility analysis under the Act is necessary.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that, although the policies contained in this rule may have a substantial direct effect on States or their political subdivisions that are designated as Empowerment Zones or Enterprise Communities, this effect is intended by the legislation authorizing the program. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States and local governments, and to reduce any regulatory burden imposed by the Federal government that impedes the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being, except to the extent that the program authorized by the rule will empower communities and their residents to take effective action to solve difficult and pressing economic, human, community and physical development challenges that have a negative impact on families. Any such impact is beneficial and merits no further review under the Order.

Semiannual Agenda

This rule was not listed in the Department's semiannual agenda of regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960. A summary of the rule, however, was listed on a supplemental agenda, submitted to the applicable House and Senate Committees after publication of the October 25, 1993 agenda.

List of Subjects in 24 CFR Part 597

Community development, Empowerment zones, Enterprise communities, Economic development, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

In accordance with the reasons set out in the preamble, chapter V of title 24 of the Code of Federal Regulations is amended by adding part 597 to read as follows:

PART 597—URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Subpart A—General Provisions

Sec.

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597.2 Objective and purpose.
597.3 Definitions.
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597.500 Indian reservations.
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597.502 Nominations by economic development corporations or the District of Columbia.
597.503 Use of census data.

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 597.1 Applicability and scope.

(a) This part establishes policies and procedures applicable to urban Empowerment Zones and Enterprise Communities, authorized under subchapter U of the Internal Revenue Code of 1986, as amended, relating to the designation and treatment of Empowerment Zones, Enterprise Communities and Rural Development Investment Areas.

(b) This part contains provisions relating to area requirements, the nomination process for urban Empowerment Zones and urban Enterprise Communities, and the designation and administration of these Zones and Communities by HUD. Provisions dealing with the nomination and designation of rural Empowerment Zones and Enterprise Communities will be promulgated by the Department of Agriculture. HUD and the Department of Agriculture will consult in all cases in which nominated areas possess both urban and rural characteristics, and will utilize a flexible approach in determining the appropriate designation.

(c) *Expiration of rule.* Part 597 will expire on January 18, 1995.

§ 597.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in urban areas, to stimulate the creation of new jobs, particularly for the disadvantaged and long-term

unemployed, and to promote revitalization of economically distressed areas.

§ 597.3 Definitions.

Designation means the process by which the Secretary designates urban areas as Empowerment Zones or Enterprise Communities eligible for tax incentives and credits established by Subchapter U of the Internal Revenue Code of 1986, as amended (26 U.S.C. 1391 *et seq.*) and for special consideration for programs of Federal assistance.

Empowerment Zone means an urban area so designated by the Secretary pursuant to this part. Up to six such Zones may be designated, *provided, that* if the Secretary designates the maximum number of zones, not less than one shall be in a nominated urban area the most populous city of which has a population of 500,000 or less; and no less than one shall be a nominated urban area which includes areas in two States and which has an area population of 50,000 or less.

Enterprise Community means an urban area so designated by the Secretary pursuant to this part. Not more than 65 such communities may be so designated.

HUD means the Department of Housing and Urban Development.

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions which is recognized by the Secretary.

Nominated area means an area nominated by one or more local governments and the State or States in which it is located for designation pursuant to this part.

Population census tract means a census tract, or, if census tracts are not defined for the area, a block numbering area.

Poverty means the number of persons listed as being in poverty in the 1990 Decennial Census.

Revocation of designation means the process by which the Secretary may revoke the designation of an urban area as an Empowerment Zone or Enterprise Community pursuant to § 597.403 of this part.

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States.

Strategic plan means a strategy developed and agreed to by the nominating local government(s) and State(s), which have provided certifications of their authority to adopt such a strategy in their application for nomination, in consultation and cooperation with the residents of the nominated are, pursuant to the provisions of § 597.200(c) of this part. The plan must include written commitments from the local government(s) and State(s) that they will adhere to that strategy.

Urban area means:

(1) Any area that lies inside a Metropolitan Area (MA), as designated by the Office of Management and Budget; or

(2) Any area outside an MA if the nominating local government has a population of 20,000 or more, or documents the urban character of the area.

§ 597.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated urban areas to determine the effectiveness of the strategic plans submitted by nominating State and local government(s) in accordance with § 597.200(c) of this part. The Secretary will designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities.

(b) *Period of designation.* The designation of an urban area as an Empowerment Zone or Enterprise Community shall remain in full effect during the period beginning on the date of designation and ending on the earliest of:

(1) The close of the tenth calendar year beginning on or after the date of designation;

(2) The termination date designated by the State and local governments in their application for nomination; or

(3) The date the Secretary modifies or revokes the designation, in accordance with § 597.402 or § 597.403 of this part.

§ 597.5 Waivers.

The Secretary of HUD may waive for good cause any provision of this part not required by statute, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

Subpart B—Area Requirements

§ 597.100 Eligibility requirements and data usage.

A nominated urban area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population which is the lesser of:

(1) 200,000, or

(2) The greater of 50,000 or ten percent of the population of the most populous city located within the nominated area;

(b) Is one of pervasive poverty, unemployment and general distress, as described in § 597.102 of this part;

(c) Does not exceed twenty square miles in total land area;

(d) Has a continuous boundary, or consists of not more than three noncontiguous parcels;

(e) Is located entirely within the jurisdiction of the unit or units of general local government making the nomination, and is located in no more than two contiguous States; and

(f) Does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the poverty rate for each population census tract in the district is not less than 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community.

§ 597.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to the criteria set forth at § 597.102 shall be based upon the 1990 Decennial Census, and from information published by the Bureau of the Census and the Bureau of Labor Statistics. The data shall be comparable as to point or period of time and methodology employed. Specific information on appropriate data to be submitted will be provided in the application.

(b) *Use of statistics on boundaries.* The boundary of an urban area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of census tracts, or, where tracts are not defined, with block numbering areas.

§ 597.102 Tests of pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Pervasive poverty shall be demonstrated by the nominating entities by providing evidence that:

(1) Poverty is widespread throughout the nominated area; or

(2) Poverty has become entrenched or intractable over time (through comparison of 1980 and 1990 census data or other relevant evidence); or

(3) That no portion of the nominated area contains any component areas of an affluent character.

(b) *Unemployment.* Unemployment shall be demonstrated by:

(1) Data indicating that the weighted average rate of unemployment for the nominated area is not less than the national average rate of unemployment; or

(2) Evidence of especially severe economic conditions, such as military

base or plant closings or other conditions which have brought about significant job dislocation within the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. A high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline, are examples of appropriate indicators of general distress.

§ 597.103 Poverty rate.

(a) *General.* The poverty rate shall be established in accordance with the following criteria:

(1) In each census tract within a nominated urban area, the poverty rate shall be not less than 20 percent;

(2) For at least 90 percent of the population census tracts within the nominated urban area, the poverty rate shall not be less than 25 percent; and

(3) For at least 50 percent of the population census tracts within the nominated urban area, the poverty rate shall be not less than 35 percent.

(b) *Special rules relating to the determination of poverty rate.* (1) *Census tracts with no population.* Census tracts with no population shall be treated as having a poverty rate which meets the standards of paragraphs (a)(1) and (2) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(3) of this section.

(2) *Census tracts with populations of less than 2,000.* A population census tract which has a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of paragraphs (a)(1) and (a)(2) of this section if more than 75 percent of the tract is zoned for commercial or industrial use.

(3) *Adjustment of poverty rates for Enterprise Communities.* Where necessary to carry out the purposes of this part, the Secretary may reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the census tracts, or, if fewer, five population tracts in the nominated urban area:

(i) The 20 percent threshold in paragraph (a)(1) of this section;

(ii) The 25 percent threshold in paragraph (a)(2) of this section; and

(iii) The 35 percent threshold in paragraph (a)(3) of this section;

Provided that, the Secretary may in the alternative reduce the 35 percent threshold by 10 percentage points for three population census tracts.

(4) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percent or more up to the next highest whole percentage figure.

(c) *Noncontiguous areas.* A nominated urban area may not contain a noncontiguous parcel unless such parcel separately meets the criteria set forth at paragraphs (a) (1), (2), and (3) of this section.

(d) *Areas not within census tracts.* In the case of an area which does not have population census tracts, the block numbering area shall be used.

Subpart C—Nomination Procedure

§ 597.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the State or States in which an urban area is located may nominate such area for designation as an Empowerment Zone and/or as an Enterprise Community, if:

(1) The urban area meets the requirements for eligibility set forth in §§ 597.100 and 597.103 of this part;

(2) The urban area is within the jurisdiction of a State or States and local government(s) that have the authority to nominate the urban area for designation and that provide written assurances satisfactory to the Secretary that the strategic plan described in paragraph (c) of this section will be implemented;

(3) All information furnished by the nominating State(s) and local government(s) is determined by the Secretary to be reasonably accurate; and

(4) The State(s) and local government(s) certify that no portion of the area nominated is already included in an Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section.

(b) *Nomination for designation.* No urban area may be considered for designation pursuant to subpart D of this part unless the nomination for designation:

(1) Demonstrates that the nominated urban area satisfies the eligibility criteria set forth at § 597.100;

(2) Includes a strategic plan, as described in paragraph (c) of this section; and

(3) Includes such other information as may be required by HUD in the application or in a Notice Inviting Applications, to be published in the **Federal Register.**

(c) *Strategic plan.* Each application for designation must be accompanied by a strategic plan, which must be developed in accordance with four key principles, which will also be utilized to evaluate the plan. These principles are:

(1) Economic opportunity, including job creation within the community and throughout the region, as well as entrepreneurial initiatives, small business expansion and training for jobs that offer upward mobility;

(2) Sustainable Community Development, to advance the creation of liveable and vibrant communities through comprehensive approaches that coordinate economic, physical, community and human development;

(3) Community-Based Partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning and other community institutions; and

(4) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(d) *Elements of strategic plan.* The strategic plan should:

(1) Indicate and briefly describe the specific groups, organizations, and individuals participating in the production of the plan and describe the history of these groups in the community;

(2) Explain how participants were selected and provide evidence that the participants, taken as a whole, broadly represent the racial, cultural and economic diversity of the community;

(3) Describe the role of the participants in the creation, development and future implementation of the plan;

(4) Identify two or three topics addressed in the plan that caused the most serious disagreements among participants and describe how those disagreements were resolved;

(5) Explain how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provide evidence that key participants have the capacity to implement the plan;

(7) Provide a brief explanation of the community's vision for revitalizing the area;

(8) Explain how the vision creates economic opportunity, encourages self-

sufficiency and promotes sustainable community development;

(9) Identify key needs of the area and the current barriers to achieving the vision for it, including a description of poverty and general distress, barriers to economic opportunity and development and barriers to human development;

(10) Discuss how the vision is related to the assets and needs of the area and its surroundings;

(11) Describe the ways in which the community's approaches to economic development, social/human services, transportation, housing, sustainable community development, public safety, drug abuse prevention, and educational and environmental concerns will be addressed in a coordinated fashion; and explain how these linkages support the community's vision;

(12) Indicate how Social Services Block Grant funds for designated Empowerment Zones and Enterprise Communities will be utilized.

(i) In doing so, the Strategic Plan shall provide the following information:

(A) A commitment by the applicant, as well as by the state government(s) that the EZ/EC SSBG funds will be used to supplement, not replace, other federal or non-Federal funds for service or activities eligible under the SSBG program;

(B) A description of the entities that will administer the SSBG funds;

(C) A certification by such entities that they will provide periodic reports on the use of the SSBG funds; and

(D) A detailed description of the activities to be financed with the EZ/EC SSBG funds and how such funds will be allocated.

(ii) The EZ/EC SSBG funds may be used to achieve or maintain the following goals, through undertaking one of the below specified program options:

(A) The goal of economic self-support to prevent, reduce or eliminate dependencies, through one of the following program options:

(*1*) Funding community and economic development services focused on disadvantaged adults and youths, including skills training, transportation services and job, housing business and financial management counseling;

(*2*) Supporting programs that promote home ownership, education or other routes to economic independence for low-income families, youth and other individuals;

(*3*) Assisting in the provision of emergency and transitional shelter for disadvantaged families, youths and other individuals;

(B) The goal of self-sufficiency, including reduction or prevention of dependencies, through one of the following program options:

(*1*) Providing assistance to non-profit organizations and/or community and junior colleges that provide disadvantaged individuals with opportunities for short-term training courses in entrepreneurial, self employment and other skills that promote individual self-sufficiency, and the interest of the community;

(*2*) Funding programs to provide training and employment for disadvantaged adults and youths in construction, rehabilitation or improvement of affordable housing, public infrastructure and community facilities; and

(C) The goal of prevention or amelioration of the neglect, abuse or exploitation of children and/or adults unable to protect themselves; or the goal of preservation or rehabilitation of families, through one of the following program options:

(*1*) Providing support for residential or non-residential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women, mothers and their children;

(*2*) Establishing programs that provide activities after school hours, including keeping school buildings open during evenings and weekends for mentor and study programs.

(iii) If the EZ/EC/SSBG funds are to be used for program options not included in paragraph (b) of this section, the strategic plan must indicate how the proposed activities meet the goals set forth in paragraph (b) of this section and the reasons the approved programs options were not pursued.

(iv) To the extent that the EZ/EC/SSBG funds are used for the program options include in paragraph (b) of this section, they may be used for the following activities, in addition to those activities permitted by Section 2005 of the Social Security Act:

(A) To purchase or improve land or facilities;

(B) To make cash payments to individuals for subsistence or room and board;

(C) To make wage payments to individuals as a social service;

(D) To make cash payments for medical care; and

(E) To provide social services to institutionalized persons.

(v) The State must obligate the EZ/EC/SSBG funds in accordance with the Strategic Plan within 2 years from the date of designation of the Empowerment Zone or Enterprise community.

(13) Indicate how tax benefits for designated Zones and Communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(14) Indicate a level of commitment necessary to ensure that these resources will be available to the area upon designation;

(15) Identify the Federal resources applied for or for which applications are planned; if a strategic plan indicates how Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant, and Housing Opportunities for People with AIDS (HOPWA) funds will be expended (for the entire locality including the nominated area), the strategic plan will be considered by the Office of Community Planning and Development at HUD toward satisfying the consolidated planning requirements that will soon be issued for these programs.

(16) Identify private resources and support, including assistance from business, non-profit organizations and foundations, which are available to be leveraged with public resources; and provide assurances that these resources will be made available to the area upon designation;

(17) Identify changes necessary to Federal rules and regulations necessary to implement the plan, including specific paperwork or other Federal program requirements that must be altered to permit effective implementation of the strategic plan; and

(18) Identify specific regulatory and other impediments to implementing the strategic plan for which waivers are requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes.

(19) Demonstrate how State and local governments will reinvent themselves to help implement the plan, by identifying changes that will be made in State and local organizations, processes and procedures, including laws and ordinances;

(20) Explain how different agencies in State and local governments will work together in new responsive ways to implement the strategic plan;

(21) Identify the specific tasks and timetable necessary to implement the plan;

(22) Describe the partnerships that will be established to carry out the plan;

(23) Explain how the plan will be regularly revised to reflect new information and opportunities; and

(24) Identify benchmarks and goals that should be used in evaluating performance in implementing the plan.

(e) *Prohibition against business relocation.* The strategic plan may not include any action to assist any establishment in relocating from one area outside the nominated urban area to the nominated urban area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(1) The establishment of a new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(f) *Implementation of strategic plan.* The strategic plan may be implemented by the local government(s) and/or by the State(s) nominating an urban area for designation and/or by nongovernmental entities identified in the strategic plan. Activities included in the plan may be funded from any source, Federal, State, local, or private, which provides assistance in the nominated area.

(g) *Activities included in strategic plan.* A strategic plan may include, but is not limited to, activities which address:

(1) Economic problems, through measures designed to create job training and employment opportunities; support for business startup or expansion; or development of community institutions;

(2) Human concerns, through the provision of social services, such as rehabilitation and treatment programs or the provision of training, education, or other services within the affected area;

(3) Community needs, such as the expansion of housing stock and homeownership opportunities, efforts to reduce homelessness, efforts to promote fair housing and equal opportunity, efforts to reduce and prevent crime and improve security in the area; and

(4) Physical improvements, such as the provision or improvement of recreational areas, transportation or other public services within the affected area, and improvements to the infrastructure and environmental protection

§ 597.201 Evaluating the strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated urban areas described in § 597.301 of this part. On the basis of this evaluation, HUD may negotiate reasonable modifications of the strategic plan or of the boundaries of a nominated urban area or the period for which such designation shall remain in full effect. The effectiveness of the strategic plan will be determined in accordance with the four key principles set forth in § 597.200(c) of this part. HUD will review each plan submitted in terms of the four equally weighted key principles, and of such other elements of these key principles as are appropriate to address the opportunities and problems of each nominated area which may include:

(a) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship increase within the Zone or Community;

(2) The extent to which residents will achieve a real economic stake in the Zone or Community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic and community development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire region or metropolitan area, and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the Zone or Community interrelates with the broader regional or metropolitan economies; and

(6) The extent to which lending and investment opportunities will increase within the Zone or Community through the establishment of mechanisms to encourage community investment and to create new economic growth.

(b) *Sustainable community development.* (1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating locality and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the Zone or Community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection, and the quality of life in the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted, and the extent to which young people will be provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(7) *Education goals.* The extent to which schools, religious institutions, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug abuse.* The extent to which the plan addresses levels of drug abuse and drug related activity through the expansion of drug treatment services, drug law enforcement initiatives and community based drug abuse education programs.

(10) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated Zone or Community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, national origin, gender or disability in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, or use of facilities.

(c) *Community-based partnerships.* (1) *Community partners.* The extent to which residents of the nominated area have participated in the development of

the strategic plan and their commitment to implementing it, and the extent to which community-based organizations in the nominated area have participated in the development of the plan and their record of success measured by their achievements and support for undertakings within the nominated area; and the extent to which the plan integrates the local educational, social, civic, environmental and health organizations and reflects the prominent place that these institutions play in the life of a revitalized community.

(2) *Private and non-profit organizations as partners.* The extent to which partnership arrangements include commitments from private and non-profit organizations, including corporations, utilities, banks and other financial institutions, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which State and local governments are committed to providing support to implement the strategic plan, including their commitment to "reinventing" their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the Zone or Community's designation and the extent to which the partners agree to be bound by their commitments.

(d) *Strategic vision for change.* (1) *Goals and Coordinated strategy.* The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets.

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

§ 597.202 Submission of nominations for designation.

(a) *General.* A nomination for designation as an Empowerment Zone and/or Enterprise Community must be submitted for each urban area for which such designation is requested. The nomination shall be submitted in a form to be prescribed by HUD in the application and in the Notice Inviting Applications published in the **Federal Register**, and must contain complete and accurate information.

(b) *Certifications.* Certifications must be submitted by the State(s) and local government(s) requesting designation stating that:

(1) The nominated urban area satisfies the boundary tests of § 597.100(d) of this part;

(2) The nominated urban area is one of pervasive poverty, unemployment and general distress, as prescribed by § 597.102 of this part;

(3) The nominated urban area satisfies the poverty rate tests set forth in § 597.103 of this part;

(4) The nominated urban area contains no portion of an area that is either already designated as an Empowerment Zone and/or Enterprise Community, or is otherwise included in any other area nominated for designation as an Empowerment Zone and/or Enterprise Community;

(5) Each nominating governmental entity has the authority to:

(i) Nominate the urban area for designation as an Empowerment Zone and/or Enterprise Community;

(ii) Make the State and local commitments required by § 597.200(d) of this part; and

(iii) Provide written assurances satisfactory to the Secretary that these commitments will be met.

(6) Provide assurances that the amounts provided to the State for the area under section 2007 of title XX of the Social Security Act will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of section 2007;

(7) Provide that the nominating governments or corporations agree to make available all information requested by HUD to aid in the evaluation of progress in implementing the strategic plan and reporting on the use of Empowerment Zone/Enterprise Community Social Service Block Grant funds; and

(8) Provide assurances that the nominating State(s) agrees to distribute the Empowerment Zone/Enterprise Community Social Service Block Grant funds in accordance with the strategic plan submitted for the designated Zone or Community.

(c) *Maps and area description.* Maps and a general description of the nominated urban area shall accompany the nomination request.

Subpart D—Designation Process

§ 597.300 HUD action and review of nominations for designation.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of nominations for designation as Empowerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the **Federal Register**.

(b) *Acceptance for processing.* (1) HUD will accept for processing those nominations for designation as Empowerment Zones or Enterprise Communities which HUD determines have met the criteria required by this part. HUD will notify the State(s) and local government(s) whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(2) The nomination for designation as an Empowerment Zone or Enterprise Community must be received by HUD on or before the time on the date established by the Notice Inviting Applications published in the **Federal Register**. The nomination for designation as an Empowerment Zone or Enterprise Community must be complete and must be accompanied by a strategic plan, as required by § 597.200(c) of this part, and the certifications required by § 597.202(b) of this part.

(c) *Evaluation of nominations.* In the process of reviewing each nomination accepted for processing, HUD may undertake a site visit(s) to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated urban areas, and/or period during which designation is in effect.* Subject to the limitations imposed by § 597.100 of this part, HUD may negotiate reasonable modifications of the strategic plan, the proposed boundaries of a nominated urban area, or the term for which a designation is to remain in full effect, to ensure maximum efficiency and fairness in the provision of assistance to such areas.

(e) *Publication of designations.* Announcements of those nominated urban areas designated as Empowerment Zones or Enterprise Communities will be made by publication of a Notice in the **Federal Register**.

§ 597.301 Selection factors for designation of nominated urban areas.

(a) *Selection factors.* In choosing among nominated urban areas eligible for designation, the Secretary shall consider:

(1) The effectiveness of the strategic plan in accordance with the key principles and evaluative criteria set out in § 597.201.

(2) The effectiveness of the assurances made pursuant to § 597.200(a)(2) that the strategic plan will be implemented.

(3) The extent to which an application proposes activities that are creative and innovative in comparison to other applications.

(4) Such other factors established by HUD. Such factors include, but are not limited to, the degree of need demonstrated by the nominated area for assistance under this part. If other factors are established by HUD, a **Federal Register** Notice will be published identifying such factors, along with an extension of the application due date if necessary.

(b) *Geographic diversity.* HUD, in its discretion, may choose to select for designation a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of designations approved under this part.

§ 597.302 Number of Empowerment Zones and Enterprise Communities designated.

(a) *Empowerment Zones.* HUD will designate up to six of the nominated urban areas as Empowerment Zones, *provided:* That if six such zones are so designated, no less than one shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than one shall be a nominated urban area which includes areas in two States and which has a population of 50,000 or less.

(b) *Enterprise Communities.* HUD will designate up to 65 of the nominated urban areas not designated Empowerment Zones under paragraph (a) of this section as Enterprise Communities.

Subpart E—Post-Designation Requirements

§ 597.400 Reporting.

HUD will require periodic reports for the Empowerment Zones and Enterprise Communities designated pursuant to this part. These reports will identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones and Enterprise Communities as HUD shall request from time to time, including information documenting nondiscrimination in hiring and employment by businesses within the designated Empowerment Zone or Enterprise Community, shall be submitted promptly.

§ 597.401 Periodic performance reviews.

HUD will regularly evaluate the progress of the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and other information submitted. HUD will also commission evaluations of the Empowerment Zone program as a whole by an impartial third party, at such intervals as HUD may establish.

§ 597.402 Validation of designation.

(a) *Reevaluation of designations.* On the basis of the performance reviews described in § 597.401, and subject to the provisions relating to the revocation of designation appearing at § 597.403, HUD will make findings on the continuing eligibility for and the validity of the designation of any Empowerment Zone or Enterprise Community. Determinations of whether any designated Empowerment Zone or Enterprise Community remains in good standing shall be promptly communicated to all Federal agencies providing assistance or administering programs under which assistance can be made available in such Zone or Community.

(b) *Modification of designation.* Based on an urban area's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation appearing at § 597.403 of this part and the requirements as to the number, maximum population and other characteristics of urban Empowerment Zones set forth in § 597.3 of this part, the Secretary may modify designations by reclassifying urban Empowerment Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

§ 597.403 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of an urban area as an Empowerment Zone or Enterprise Community if the Secretary determines, on the basis of the periodic performance review described at § 597.401 of this part, that the State(s) or local government(s) in which the urban area is located:

(1) Has modified the boundaries of the area;

(2) Has failed to make progress in achieving the benchmarks set forth in the strategic plan; or

(3) Has not complied substantially with the strategic plan.

(b) *Letter of warning.* Before revoking the designation of an urban area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the nominating State(s) and local government(s):

(1) Advising that the Secretary has determined that the nominating local government(s) and/or State(s) has:

(i) Modified the boundaries of the area; or

(ii) Is not complying substantially with, or has failed to make progress in achieving the benchmarks set forth in the strategic plan prepared pursuant to § 597.200(c) of this part; and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* After allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination pursuant to paragraph (a) of this section, the Secretary may issue a final notice of revocation of the designation of the urban area as an Empowerment Zone or Enterprise Community.

(d) *Notice to affected Federal agencies.* HUD will notify all affected Federal agencies providing assistance in an urban Empowerment Zone or Enterprise Community of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to § 597.402(b) of this part.

Subpart F—Special Rules

§ 597.500 Indian reservations.

No urban Empowerment Zone or Enterprise Community may include any area within an Indian reservation.

§ 597.501 Governments.

If more than one State or local government seeks to nominate an urban area under this part, any reference to or requirement of this part shall apply to all such governments.

§ 597.502 Nominations by economic development corporations or the District of Columbia.

Any urban area nominated by an Economic Development Corporation chartered by the State in which it is located or by the District of Columbia shall be treated as nominated by a State and local government.

§ 597.503 Use of census data.

Population and poverty rate data shall be determined by the most recent decennial census data available.

Dated: January 12, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–1158 Filed 1–14–94; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3704; FR–3594–N–01]

Notice Inviting Applications for Designation of Empowerment Zones and Enterprise Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice inviting applications.

SUMMARY: This Notice invites applications from States and local governments nominating urban areas for designation as Empowerment Zones or Enterprise Communities, as those terms are defined in this Notice and in an interim rule published elsewhere in today's **Federal Register**. The interim rule provides the guidance on contents of the applications.

DATES: Application due date: Applications may be submitted at any time after February 17, 1994. The deadline for receipt of an application 4 p.m. Eastern Time on June 30, 1994. Applications received after that date will not be considered.

ADDRESSES: Applications may be obtained from CPD personnel in any HUD Field Office listed in the appendix to this Notice, or by telephoning (202) 708–0784. (This is not a toll-free number.) Applications must be sent to: U.S. Department of Housing and Urban Development, Office of Community Planning and Development, EZ/EC Team, room 7255, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development, room 7136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2290; TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reader should refer to the interim rule, published elsewhere in today's **Federal Register**, for information on the information collection requirements of the rule and this notice.

I. Background

At the core of President Clinton's economic proposals to Congress and to the American people is the need to empower America's distressed communities. His Empowerment Zone proposal represents a new approach to the problems of distressed communities. It uses a bottom-up community based strategy rather than a top-down bureaucratic approach. It is a strategy to empower residents and all sections of a community to come together to create jobs and opportunities.

Title XIII of the Omnibus Reconciliation Act of 1993, enacted to implement the President's vision, authorizes the Secretary of the Department of Housing and Urban Development to designate up to six Empowerment Zones and up to 65 Enterprise Communities in urban areas and the Secretary of the Department of Agriculture to designate up to three Empowerment Zones and up to 30 Enterprise Communities in rural areas. (Unless otherwise noted, all references in this Notice to Empowerment Zones also include Enterprise Communities.) This Notice invites applications from State and local governments for the purpose of nominating urban areas to be designated as Empowerment Zones.

The program is intended to combine the resources of the Federal government with those of State and local governments, educational institutions, and the private and non-profit sectors to implement the Strategic Plan. The Federal government will take steps to coordinate Federal assistance in support of the Zones, including expedited processing, priority funding, and working to overcome programmatic regulatory and statutory impediments. To that end, a Presidential Directive has been issued that creates a Community Enterprise Board headed by Vice President Gore to carry out these responsibilities.

II. Eligibility

The statute specifies certain criteria that must apply in order for an area to be eligible for Empowerment Zone designation, including geographic size, population, poverty rate by census tract (or where an area is not tracted, generally in rural areas, by the equivalent of census tracts—block numbering areas), pervasive poverty, unemployment, and general distress of the area. The details of these requirements are described in the interim rule governing the program, published elsewhere in today's **Federal Register**.

This information must be provided in the application. HUD will accept certifications of the data, subject to verification if an application is selected for designation.

III. Designation Factors

The statute specifies three factors to be considered by the Secretary in designating Empowerment Zones: (1) The effectiveness of the Strategic Plan; (2) the effectiveness of the assurances provided in support of the Plan; and (3) other criteria to be specified by the Secretary. Each of these factors is discussed in greater detail in the interim rule. (The Strategic Plan is described in the interim rule at 24 CFR 597.200.)

IV. Timing and Location of Application Submissions

Applications may be obtained from any CPD personnel in any HUD Field Office (see appendix) or by calling (202) 708–0784. (This is not a toll-free number.) Applications may be submitted at any time following February 17, 1994, which is the effective date of the interim rule governing the program. Applications must be submitted to the address listed under "**ADDRESSES**" at the beginning of this Notice. The deadline for receipt of the application at the address specified in the application is 4 p.m. Eastern Time on June 30, 1994. Applications received after that date and time will not be accepted, and will be returned to the sender. Applications sent by FAX are not acceptable.

Applicants will be notified of an incomplete application. The applicant will be given an opportunity to provide the missing information to HUD.

V. Miscellaneous

Empowerment Zone designation does not constitute a Federal action under the Uniform Relocation Act (URA). However, any activity constituting a Federal action that may result from such a designation may be subject to the provisions of the URA, as well as any other statutory or regulatory provisions governing the particular Federal action.

VI. Other Matters

Paperwork Reduction Act

See information contained in the interim rule for this program, published elsewhere in today's **Federal Register**, for information on the approval of information collection requirements under the Paperwork Reduction Act.

Environment, Federalism, Family

Findings with regard to the National Environmental Policy Act, Executive Order 12612 (Federalism), and Executive Order 12606 (The Family) have been made under the interim rule for this program (24 CFR part 597), published elsewhere in today's **Federal Register**.

Dated: January 12, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

HUD Field Offices

Region I (Boston)

Boston Regional Office, Room 375, Thomas P. O'Neill, Jr., Federal Bldg., 10 Causeway Street, Boston, MA 02222–1092, Telephone No. (617) 565–5234

Field Offices

Hartford Office, First Floor, 330 Main Street, Hartford, CT 06106–1860, Telephone No. (203) 240–4523

Region II (New York)

New York Regional Office, 26 Federal Plaza, New York, NY 10278–0068, Telephone No. (212) 264–6500

Field Offices

Buffalo Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, Telephone No. (716) 846–5755

Newark Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, Telephone No. (201) 622–7900

Region III (Philadelphia)

Philadelphia Regional Office, Liberty Square Building, 105 South Seventh Street, Philadelphia, PA 19106–3392, Telephone No. (215) 597–2560

Field Offices

Baltimore Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, Telephone No. (401) 962–2520

Pittsburgh Office, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, Telephone No. (412) 644–6428

Richmond Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, Telephone No. (804) 278–4507

Washington, DC Office, 820 First Street, NE, Washington, DC 20002–4205, Telephone No. (202) 275–9200

Region IV (Atlanta)

Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388, Telephone No. (404) 331–5136

Field Offices

Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, Telephone No. (205) 290–7617

Caribbean Office, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, Telephone No. (809) 766–6121

Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, Telephone No. (803) 765–5592

Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, Telephone No. (919) 547–4001

Jackson Office, Suite 910, Doctor A. H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1096, Telephone No. (601) 965–5308

Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, Telephone No. (904) 232–2626

Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, Telephone No. (615) 545–4384

Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, Telephone No. (502) 582–5251

Region V (Chicago)

Chicago Regional Office, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, Telephone No. (312) 353–5680

Field Offices

Columbus Office, 200 North High Street, Columbus, OH 43215–2499, Telephone No. (614) 469–5737

Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, Telephone No. (313) 226–7900

Indianapolis Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, Telephone No. (317) 226–6303

Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, Telephone No. (414) 297–3214

Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, MN 55401–2195, Telephone No. (612) 370–3000

Region VI (Fort Worth)

Fort Worth Regional Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, Telephone No. (817) 885–5401

Field Offices

Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, Telephone No. (501) 324–5931

New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, LA 70112–2887, Telephone No. (504) 589–7200

Oklahoma City Office, Murrah Federal Building, 200 N.W. Fifth Street, Oklahoma City, OK 73102–3202, Telephone No. (405) 231–4181

San Antonio Office, Washington Square, 800 Dolorosa, San Antonio, TX 78207–4563, Telephone No. (512) 229–6800

Region VII (Kansas City)

Kansas City Regional Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, Telephone No. (913) 236–2162

Field Offices

Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, Telephone No. (402) 492–3101

St. Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, Telephone No. (314) 539–6560

Region VIII (Denver)

Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, Telephone No. (303) 844–4513

Region IX (San Francisco)

San Francisco Regional Office, Phillip Burton Federal Building, and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003 San Francisco, CA 94102–3448, Telephone No. (415) 556–4752

Field Offices

Honolulu Office, Suite 500, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, Telephone No. (808) 541–1323

Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, CA 90015–3801, Telephone No. (213) 251–7122

Region X (Seattle)

Seattle Regional Office, Suite 200, Seattle Federal Office Building, 909 1st Avenue, Seattle, WA 98104–1000, Telephone No. (206) 220–5101

Field Offices

Anchorage Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4135, Telephone No. (907) 271–4170

Portland Office, 520 Southwest Sixth Avenue, Portland, OR 97204–1596, Telephone No. (503) 326–2561

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federal register

Tuesday
January 18, 1994

Part VIII

Department of Education

34 CFR Parts 600 and 601

Institutional Eligibility Under the Higher Education Act of 1965; Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 601

RIN 1840–AB88

Institutional Eligibility Under the Higher Education Act of 1965, As Amended; Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the regulations for Eligibility of Foreign Medical Schools under the Guaranteed Student Loan Program (GSLP) to reflect changes made to the HEA by the Higher Education Amendments of 1992. The Secretary proposes to remove the latter regulations from title 34 of the Code of Regulations, revise them, and add them to the former regulations, as a new subpart E. The proposed regulations would revise the procedures and criteria under which a foreign institution establishes eligibility to apply to participate in the Federal Family Education Loan (FFEL) programs if the institution is comparable to an eligible institution of higher education located in the United States.

DATES: Comments must be received on or before March 4, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Joyce R. Coates, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, Regional Office Building 3, Washington, DC 20202–5346.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce R. Coates, Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Institutional Eligibility regulations contain requirements that apply to all postsecondary educational institutions that seek initial or continued eligibility to apply to participate in the programs authorized by the HEA.

Negotiated Rulemaking

Section 492 of the HEA contains procedural requirements that the Secretary is to follow in developing proposed regulations required for changes made by the Higher Education Amendments of 1992 (Pub. L. 102–325) to parts B, G, and H of title IV of the HEA.

Section 492(a) required the Secretary to convene regional meetings to gain public input on the content of proposed regulations. Participants at those meetings were to include individuals and representatives of the groups involved in the student financial assistance programs authorized under title IV of the HEA, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies. During the meetings, the Secretary was to provide for a comprehensive discussion and exchange of information concerning the implementation of the amendments made by Public Law 102–325 to parts B, G, and H, and was to take information received at the meetings into account in the development of proposed regulations.

Subsequent to the regional meetings, the Secretary was to draft and submit regulations implementing the amendments made to parts B, G, and H to a negotiated rulemaking process. Participants in the negotiations process were to be chosen by the Secretary from individuals nominated by groups participating in the regional meetings and were to reflect the diversity and sizes of organizations providing financial aid services to both local areas and national markets.

In accordance with these requirements, the Secretary convened four regional meetings to discuss issues raised by the 1992 Amendments to the Higher Education Act, including the eligibility of foreign institutions to apply to participate in the FFEL programs. The primary issues considered in those meetings were: the general criteria needed for the Secretary to determine the eligibility of institutions outside the United States, how the Secretary should determine whether a foreign institution is comparable to an eligible institution of higher education in the United States, and the appropriate method for calculating examination "pass rates" of students or graduates of foreign graduate medical schools. (These pass rates are among a number of statutory requirements for determining the eligibility of foreign graduate medical schools.)

Meetings were held in New York, New York; San Francisco, California; Atlanta, Georgia; and Kansas City, Missouri, during the month of September 1992. Participants in the meetings were invited to nominate individuals to serve as negotiators in the negotiated rulemaking sessions.

Taking into account views expressed at the regional meetings, the Department prepared draft proposed regulations on the 1992 Amendments. The draft regulations were negotiated during the negotiated rulemaking sessions. The negotiators reached general agreement on the content of the draft regulations relating to the eligibility of foreign institutions to apply to participate in the FFEL programs.

A summary of the significant changes made by these proposed regulations to current regulations follows.

Summary of Proposed Changes

Proposed § 600.51 (current § 601.1) Purpose and scope. The Secretary proposes to revise the purpose and scope of proposed subpart E to remove the provisions that exempt from these regulations medical schools in Canada or other foreign countries, if those schools are accredited by a nationally recognized accrediting agency that accredits medical schools in the United States. This change is necessary because of the statutory change to section 481 of the HEA that requires every foreign institution to be subject to all of the applicable criteria for determining the eligibility of foreign institutions. Accreditation by a nationally recognized accrediting agency is still among the criteria in proposed § 600.55(a)(4)(ii) for a public or private nonprofit foreign medical school to be eligible to apply to participate in the FFEL programs (see the discussion under that section).

Proposed § 600.52 (current § 601.2) Definitions. This section would define a foreign institution as one that is not located in a State, and would revise the definition of a foreign graduate medical school to require medical schools in Canada to be subject to proposed subpart E of 34 CFR part 600. These changes reflect statutory changes.

This section also would define a secondary school as one that provides secondary education under the laws of the country in which the school is located. This definition is needed for purposes of establishing compliance with criteria in § 600.54 governing a foreign institution's admission policies and level of educational program offered.

Proposed § 600.53 (current § 601.3) Requesting an eligibility determination. The Secretary proposes to require a foreign institution to provide, release, or authorize the release to the Secretary of the information that would be required in this subpart. The failure to provide that information would render the institution ineligible to participate in

the FFEL programs. These provisions restate the statutory requirement in section 481(a)(2)(C) of the HEA. With regard to the provision of performance data that would be required in § 600.55 on examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG), the ECFMG initially informed the Secretary that it would study the issue. Subsequently, the ECFMG indicated that it is unwilling to furnish this data directly to the Secretary. Consequently, the Secretary proposes to require applicant institutions to furnish the data to enable the Secretary to comply with the statutory mandate to consider the pass rates on those exams.

The Secretary also proposes to require a foreign institution seeking initial or continued eligibility to apply for a determination of that eligibility on a form prescribed by the Secretary, rather than permitting a student to apply on behalf of the institution, as is currently the case. This change is necessary because of the statutory change requiring an institution to furnish applicable information. However, a student would still be able to inform the Secretary of his or her desire to seek an FFEL program loan for attendance at a foreign institution. The Secretary would then contact the institution and supply the institution with application forms.

Proposed § 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs. This section would contain the criteria that the Secretary would use to determine whether a foreign institution is eligible to apply to participate in the FFEL programs. To be eligible, a foreign institution would have to admit as regular students only persons who have a credential for completion of secondary school or the recognized equivalent of that credential. The institution would have to be legally authorized to provide a postsecondary educational program. The institution would have to provide an eligible educational program that leads to a legally authorized degree equivalent to an associate, bachelor's, graduate, or professional degree awarded in the United States, would have to be at least a two-academic-year program acceptable for full credit toward the equivalent of a bachelor's degree awarded in the United States, or would have to be equivalent to at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation.

Because the criteria of this section would be parallel to those required of institutions of higher education, the Secretary proposes to adopt the criteria for purposes of determining that a foreign institution is comparable to an institution of higher education in the United States.

Proposed § 600.55 (current § 601.4) Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs. The Secretary proposes to add to the criteria in current § 601.4 a requirement for a foreign graduate medical school to employ as faculty members only those with academic credentials equivalent to credentials required of faculty members teaching the same or similar courses in the United States. The Secretary considers this requirement necessary for determining the comparability of foreign graduate medical schools to medical schools in the United States.

The Secretary proposes to replace the current requirement in § 601.4(e) concerning the pass rate of students and graduates of foreign graduate medical schools on ECFMG examinations with new requirements. The new requirements are mandated by the changes to section 481(a)(2) of the HEA. Under those statutory changes, for the year preceding the year in which any of a foreign graduate medical school's students seeks a loan under the FFEL programs, generally at least 60 percent of the school's enrolled students and 60 percent of its graduates must have been neither citizens nor nationals of the United States nor eligible noncitizens for purposes of the title IV, HEA programs. Further, for the year preceding the year in which any of the school's students seeks a loan under the FFEL programs, generally at least 60 percent of the school's students or graduates taking ECFMG examinations must have received a passing score on those examinations.

The Secretary, in implementing these requirements, proposes several clarifications to ensure the statistical accuracy and uniformity of a foreign graduate medical school's calculations. For purposes of the calculation concerning the citizenship of the school's students and graduates, the school would count only those enrolled students who are full-time regular students. The Secretary believes that it is necessary to restrict this calculation to full-time regular students to prevent institutions from enrolling a significant number of part-time students who are not seeking a degree or certificate in order to obtain the required percentage. The school would count as graduates only those from its most recent graduating class during the academic year preceding the year for which the calculation is performed.

For purposes of the calculation concerning the pass rate of the school's students and graduates, the school would count all enrolled students, regardless of their enrollment status or their regular student status. The Secretary believes that it is appropriate to count all enrolled students or graduates in the pass rate calculations in order to obtain a larger sample, thereby ensuring statistical accuracy and validity. A second reason to include all enrolled students in the pass rate calculation is that the statute requires the Secretary to consider the pass rate on the examinations administered by the ECFMG as a measure of comparability to medical schools located in the United States. Performance on the examinations administered by the ECFMG reflects both the quality of the education at the foreign medical school and the knowledge of the individual student who takes the examination. Thus, it is appropriate to include the scores of all students in this calculation to fully reflect the comparability of the institution and its students and graduates to medical schools located in the United States. The Secretary also notes that the statute did not expressly exclude any students from calculation of the pass rate. The school would count as graduates those persons who graduated from the school during the three years preceding the year for which the calculation is performed.

The ECFMG examinations are administered separately in two steps: Step 1 includes basic medical sciences and Step 2 includes the clinical sciences. A person may take each step in different years. In addition, the ECFMG administers an English test for purposes of satisfying the requirement for demonstrating English language competency to obtain ECFMG certification. Therefore, the Secretary would require the school's calculation for any year to include any student or graduate who took any step of the ECFMG examinations, including the English test.

Section 481(a)(2) of the HEA exempts from both of the above calculations a foreign graduate medical school whose clinical program has been approved by a State as of January 1, 1992. The Secretary would include this exemption, but would further require the school's clinical program to maintain current State approval. The Secretary believes that this additional requirement is necessary to establish

that a school that does not meet the applicable minimum percentages at least has a clinical program comparable to one provided by an eligible institution of higher education in the United States.

This section also would require a foreign graduate medical school to be accredited by an accrediting body legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the school's country. The accreditation standards used by that accrediting body would have to be evaluated by an advisory panel of medical experts appointed by the Secretary and that panel would have to determine if those standards are comparable to those used for accrediting medical schools in the United States. A public or nonprofit school that is not accredited would have to be accredited by a nationally recognized accrediting agency designated by the Secretary. (Currently, the Secretary recognizes the Liaison Committee on Medical Education for the accreditation of programs leading to the M.D. degree.) These accreditation requirements are mandated by the changes to section 481(a)(2) of the HEA.

Proposed § 600.56 (current §§ 601.6 and 601.7) Duration of eligibility determination. The Secretary proposes to provide for the expiration of a foreign institution's eligibility after four years, unless the Secretary specifies a shorter period of eligibility. Currently, a foreign institution's eligibility generally expires after two years. The Secretary proposes this change to allow for treatment of foreign institutions consistent with that for institutions in the United States.

The Secretary proposes to provide for the continued eligibility of a foreign graduate medical school to be contingent upon the school's annual submission of the information in § 600.55 concerning the school's enrollment and pass rate on ECFMG examinations. Currently, a foreign graduate medical school's eligibility is not terminated solely because of a failure to maintain the specified pass rate. The Secretary proposes to make this change to conform to changes made by the Higher Education Amendments of 1992.

The Secretary also proposes to provide for the continued eligibility of an otherwise eligible student for loans under the FFEL programs for up to an academic year after the academic year in which a foreign institution loses eligibility, if the student received an FFEL program loan for attendance at the institution while the institution was eligible. This change would merely reflect statutory changes made by the Higher Education Amendments of 1992.

Current § 601.7 Exception for students who received a GSLP loan to attend a foreign medical school prior to the publication date of this subpart. The Secretary proposes to remove this section, which governed the eligibility of certain students for loans under the FFEL programs before the publication date of the current regulations (February 25, 1983). This section is no longer needed.

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 small entities affected by these regulations are small foreign institutions. However, the regulations would not have a significant economic impact on the small institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal burdens necessary to implement statutory requirements.

Paperwork Reduction Act of 1980

Section § 600.53 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect businesses or other for-profit entities and nonprofit institutions that participate in the FFEL programs. The Secretary needs to collect this information to enable the Secretary to enforce the statutory provisions for determining the eligibility of foreign institutions to apply to participate in the FFEL programs.

Annual public reporting burden for this collection of information is estimated to average three hours per response for 1,100 institutions, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of 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.

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 4318, Regional Office Building 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.

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 Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: January 5, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 600 and by removing part 601 as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1082, 1085, 1088, 1094, and 1141, unless otherwise noted.

2. A new subpart E is added to part 600 to read as follows:

* * * * *

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

Sec.

600.51 Purpose and scope.
600.52 Definitions.
600.53 Requesting an eligibility determination.
600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.
600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

Sec.
600.56 Duration of eligibility determination.
* * * * *

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

§ 600.51 Purpose and scope.

(a) A foreign institution is eligible to apply to participate in the Federal Family Education Loan (FFEL) programs if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary in accordance with the provisions of this subpart.

(b) This subpart E contains the procedures and criteria under which a foreign institution may be deemed eligible to apply to participate in the FFEL programs.

(c) This subpart E does not include the procedures and criteria by which a foreign institution that is deemed eligible to apply to participate in the FFEL programs actually applies for that participation. Those procedures and criteria are contained in the FFEL programs regulations, 34 CFR 682.600.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.52 Definitions.

The following definitions apply to this subpart E:

Foreign graduate medical school: A foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the World Directory of Medical Schools published by the World Health Organization (WHO).

Foreign institution: An institution that is not located in a State.

Passing score: The minimum passing score as defined by the Educational Commission for Foreign Medical Graduates (ECFMG).

Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.53 Requesting an eligibility determination.

(a) To be designated as eligible to apply to participate in the FFEL Program or to continue to be eligible beyond the scheduled expiration of the institution's current period of eligibility, a foreign institution must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of that eligibility.

(b) The failure of a foreign institution to provide, release, or authorize release to the Secretary of information that is required in this subpart E shall render the institution ineligible to apply to participate in the FFEL programs.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the FFEL programs if the foreign institution—

(a) Admits as regular students only persons who—

(1) Have a secondary school completion credential; or

(2) Have the recognized equivalent of a secondary school completion credential;

(b) Is legally authorized by an appropriate authority to provide an eligible educational program beyond the secondary school level in the country in which the institution is located; and

(c) Provides an eligible education program—

(1) For which the institution is legally authorized to award a degree that is equivalent to an associate, baccalaureate, graduate, or professional degree awarded in the United States;

(2) That is at least a two-academic-year program acceptable for full credit toward the equivalent of a baccalaureate degree awarded in the United States; or

(3) That is equivalent to at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

(a) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in § 600.54, the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom medical instruction of not less that 32 months in length, that is supervised closely by members of the school's faculty and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or

(ii) In the United States, through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at medical schools in the United States.

(4)(i) The school has been approved by an accrediting body—

(A) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(B) Whose standards of accreditation of graduate medical schools—

(*1*) Have been evaluated by the advisory panel of medical experts established by the Secretary; and

(*2*) Have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(ii) The school is a public or private nonprofit educational institution that satisfies the requirements in § 600.4(a)(5)(i).

(5)(i)(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in 34 CFR 668.7(a)(4)(i) through (iii); and

(B) At least 60 percent of the school's students and graduates who took any step of the examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG) (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks an FFEL program loan received passing scores on the exams; or

(ii) The school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State.

(b) In performing the calculation required in paragraph (a)(5)(i)(B) of this

section, a foreign graduate medical school shall count as a graduate each person who graduated from the school during the three years preceding the year for which the calculation is performed.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.56 Duration of eligibility determination.

(a) The eligibility of a foreign institution under subpart E expires four years after the date of the Secretary's determination that the institution is eligible to apply for participation, except that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under § 600.55(a)(5)(i), subject to the terms described in § 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any one of the criteria in this subpart E.

(c) Notwithstanding the provisions of 34 CFR 668.25(c)(2), if a foreign institution loses its eligibility under subpart E of this part, an otherwise eligible student, continuously enrolled at the institution before the loss of eligibility, may receive an FFEL program loan for attendance at that institution for the academic year succeeding the academic year in which that institution lost its eligibility, if the student actually received an FFEL program loan for attendance at the institution for a period during which the institution was eligible under this subpart E.

(Authority: 20 U.S.C. 1082, 1088, 1099c)

PART 601—ELIGIBILITY OF FOREIGN MEDICAL SCHOOLS UNDER THE GUARANTEED STUDENT LOAN PROGRAM (GSLP) [REMOVED and RESERVED]

3. Part 601 of title 34 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 94–1119 Filed 1–14–94; 8 45 am]
BILLING CODE 4000–01–P

federal register

Tuesday
January 18, 1994

Part IX

Department of Defense

Department of the Navy

CNO Executive Panel; Meeting; Notice

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Intelligence Update will meet January 18, 1994, 9 a.m. to 3 p.m. at the Center for Naval Analyses. This session will be closed to the public.

The purpose of this meeting is to provide an update of significant foreign intelligence developments which will affect future Navy planning. The agenda will consist of a series of sensitive all source briefings by the Office of Naval Intelligence with questions and discussion of subject matter following each briefing. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, VA 22302-0268, Phone (703) 756-1205.

Dated: December 16, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-1290 Filed 1-14-94; 8:56 am]

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federal register

Tuesday
January 18, 1994

Part X

The President

Proclamation 6645—Martin Luther King, Jr., Federal Holiday, 1994

Federal Register
Vol. 59, No. 11
Tuesday, January 18, 1994

Presidential Documents

Title 3—

The President

Proclamation 6645 of January 14, 1994

Martin Luther King, Jr., Federal Holiday, 1994

By the President of the United States of America

A Proclamation

On January 15, 1929, Martin Luther King, Jr., was born, destined to make our world a greater and more noble one. Growing up in a landscape disfigured with "Colored Only" and "White Only" signs and a society rife with other demeaning racial barriers and distinctions, Martin Luther King, Jr., sadly learned that the Constitution's guarantee of equality was denied to most black Americans. He dedicated his life to ending the injustice of racism, gracing the world with his vision of a land guided by love instead of hatred and by acceptance instead of intolerance.

Three decades ago, Dr. King described his goals most eloquently in his famous "I Have a Dream" speech at the historic Civil Rights March on Washington. The impassioned plea that rose from the steps of the Lincoln Memorial that summer day stirred the entire Nation, awakening people everywhere to turn from the scourge of racism to embrace the promise of opportunity and democracy for all. He prophetically described a future in which our children are judged "not by the color of their skin, but by the content of their character." His unparalleled commitment to justice and nonviolence challenged us to look deeply within ourselves to find the roots of racism.

Throughout his all too brief life, Martin Luther King, Jr., often confronted powerful and even violent opposition, sacrificing his liberty, his personal safety, and, ultimately, his life for the cause of freedom. Though an assassin's bullet silenced him forever at the young age of 39, Dr. King's words and deeds continue to live on within each of us. We, the inheritors of the fundamental rights he helped to secure, are forever grateful for his legacy.

Today, we live in a nation that is stronger because of Dr. King's work. Unfortunately, there is still much division in this great land. Even though the signs that once segregated our communities have been removed, we are still far from achieving the world for which Dr. King struggled, toiled, and bled. He did not live and die to create a world in which people kill each other with reckless abandon. He did not live and die to see families destroyed, to see communities abandoned, and to see hope disappear. If we are to be faithful to Dr. King's vision, we must each seize responsibility for realizing the goals he worked so tirelessly to fulfill. Dr. King's valiant struggle for true equality will be won, not by the fleeting passion of eloquent words, but by the quiet persistence of individual acts of decency, justice, and human kindness. We must carry the power of his wisdom with us, not only by celebrating his birthday, but also by inscribing its meaning upon our hearts, teaching our children the value and significance of every human being.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 17, 1994, as the Martin Luther King, Jr., Federal Holiday. I call upon the people of the United States to observe the occasion with appropriate programs, ceremonies, and activities.

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

William J. Clinton

[FR Doc. 94–1326
Filed 1–14–94; 11:26 am]
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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
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2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
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10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
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11	(869–019–00034–8)	13.00	Jan. 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

Public Laws

103d Congress, 2d Session, 1994

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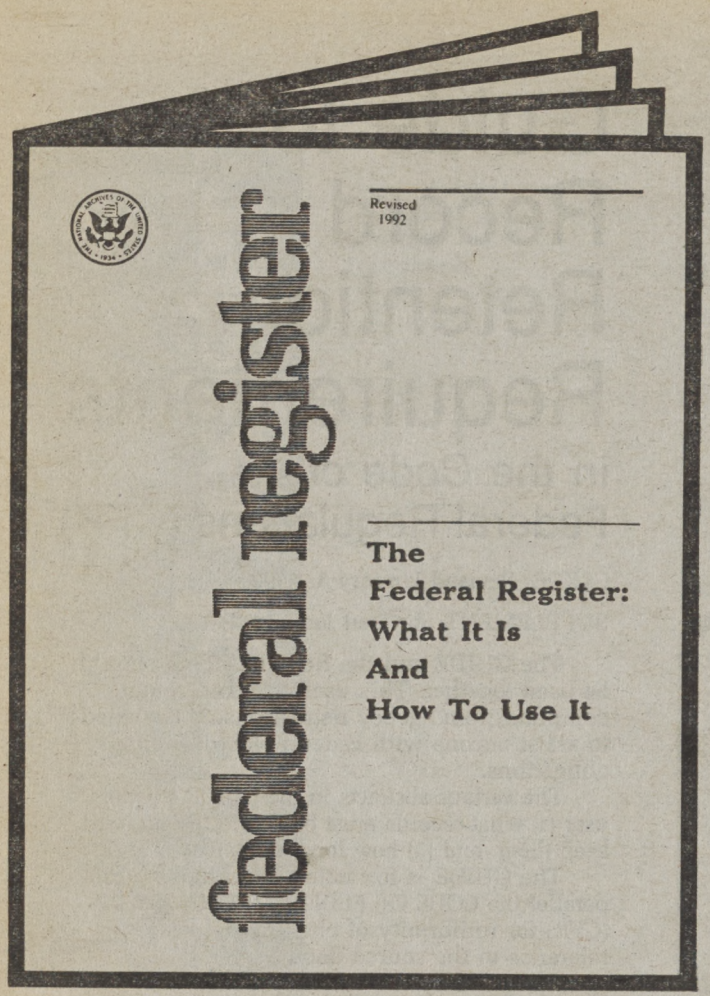

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