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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: February 17 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

INTER-AMERICAN FOUNDATION

5 CFR Chapter LXIII

22 CFR Part 1001

RIN 3209–AAOO, 3209–AAO4, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Inter-American Foundation

AGENCY: Inter-American Foundation.

ACTION: Final rule.

SUMMARY: The Inter-American Foundation ("Foundation"), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Foundation that supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635. The Foundation is also repealing its regulations that were superseded by these standards and by the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

EFFECTIVE DATE: These regulations are effective January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Adolfo A. Franco, Designated Agency Ethics Official, or Evan M. Koster, Alternate Designated Agency Ethics Official, Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203. Telephone 703–841–3800.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Foundation, with OGE's concurrence, has determined that the following supplemental regulations, being codified in part 7301 of new chapter LXIII of 5 CFR, are necessary to the successful implementation of the Foundation's ethics program. By this rulemaking, the Foundation is also repealing its regulations at 22 CFR part 1001 which have been superseded by the Standards and by OGE regulations at 5 CFR part 2634, Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture.

II. Analysis of the Regulations

Section 7301.101 General

New § 7301.101(a) of 5 CFR explains that the supplemental regulations apply to employees of the Inter-American Foundation, with the exception of members of the Foundation's Board of Directors and Advisory Council, and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Section 7301.101(a) also provides a cross-reference to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634.

The head of each executive branch agency is required by 5 CFR 2638.202(b) to appoint a designated agency ethics official and an alternate agency ethics official to carry out the duties specified in 5 CFR 2638.203. Section 7301.101(b) specifies that the Foundation's General Counsel will serve as its designated agency ethics official and that the Deputy General Counsel will serve as the alternate agency ethics official. Section 7301.102 of these supplemental regulations gives the designated agency ethics official and the alternate the additional responsibility of approving requests for prior approval to engage in compensated outside teaching, speaking and writing activities.

Section 7301.102 Prior Approval for Outside Teaching, Speaking and Writing

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation, require its employees to obtain prior approval before engaging in specific types of outside activities. Under 22 CFR 1001.5(c), which is being repealed by this final rule, the Foundation has required its employees to obtain prior approval to engage in outside teaching, lecturing or writing. To ensure compliance with the executive branch-wide limitations on teaching, speaking and writing at 5 CFR 2635.807, and based on its experiences with the similar requirement that has been in effect under 22 CFR 1001.5(c), the Foundation has determined that it is desirable for the administration of its ethics program to continue to require Foundation employees to obtain prior approval to engage in compensated teaching, speaking and writing. Section 7301.102 (a), thus, imposes such a requirement for prior approval by the designated agency ethics official or the alternate agency ethics official. To ensure that approval is granted in accordance with applicable standards, 5 CFR 7301.102(b) provides that approval shall be granted only upon a determination that the outside teaching, speaking or writing is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635.

III. Repeal of Foundation Employee Responsibilities and Conduct Regulations

Because the Foundation's regulations on Employees Responsibilities and Conduct have been superseded by the new executive branch standards of ethical conduct and financial disclosure regulations, 5 CFR parts 2634 and 2635, the Foundation is repealing all of existing 22 CFR part 1001. To ensure that Foundation employees are on notice of the ethical standards and financial disclosure requirements to which they are subject, the Foundation is replacing its old standards at 22 CFR part 1001 with a new standard at 22 CFR 1001.1 which cross-references 5 CFR parts 2634 and 2635, as well as the Foundation's supplemental regulations at 5 CFR part 7301.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

In accordance with the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)(3)), the Foundation has found that good cause exists for waiving

as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to the rules and repeals. Public comment is unnecessary because these regulations merely revoke existing regulations in accordance with previously issued Government-wide regulations and make non-substantive amendments. In addition, since these regulations relate to agency management and personnel they are exempt from notice and comment under 5 U.S.C. 553 (a)(2).

Executive Order 12866

In promulgating these final regulations, the Foundation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These regulations have not been reviewed by the Office of Management and Budget under that Executive order, as they deal with agency organization, management, and personnel matters and are not, in any event, deemed "significant" thereunder.

Regulatory Flexibility Act

The Foundation has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that these regulations will not have a significant impact on small business entities because they affect only Foundation employees.

Paperwork Reduction Act

The Foundation has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 7301

Conflict of interests, Government employees.

22 CFR Part 1001

Conflict of interests, Government employees.

Dated: January 11, 1994.

Adolfo A. Franco,

General Counsel, Inter-American Foundation.

Approved: January 14, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Inter-American Foundation, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 22 of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter LXIII, consisting of part 7301, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LXIII—INTER-AMERICAN FOUNDATION

PART 7301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INTER-AMERICAN FOUNDATION

Sec.
7301.101 General.
7301.102 Prior approval for outside teaching, speaking and writing.

Authority: 5 U.S.C. 7301; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp. p. 306; 5 CFR 2635.105, 2635.803; 5 CFR 2638.202(b).

§ 7301.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Inter-American Foundation, with the exception of members of the Foundation's Board of Directors and Advisory Council, and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635, directors and other employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

(b) *Designated agency ethics official.* For purposes of this part and otherwise as required by 5 CFR 2638.202, the General Counsel of the Inter-American Foundation shall serve as the designated agency ethics official. The Deputy General Counsel shall serve as the alternate agency ethics official.

§ 7301.102 Prior approval for outside teaching, speaking and writing.

(a) Before engaging in outside teaching, speaking or writing, for compensation, an employee, with the exception of members of the Foundation's Board of Directors and Advisory Council, shall obtain prior written approval from the designated agency ethics official or the alternate agency ethics official.

(b) Approval shall be granted only upon a determination that the outside teaching, speaking or writing is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

22 CFR CHAPTER X—INTER-AMERICAN FOUNDATION

2. Part 1001 is revised to read as follows:

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301.

§ 1001.1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Directors and other employees of the Inter-American Foundation should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Inter-American Foundation regulations at 5 CFR part 7301 which supplement the executive branch standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 94–1693 Filed 1–26–94; 8:45 am]

BILLING CODE 7025–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 703

RIN 0560–AD59

Wetlands Reserve Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Title XII, section 1237 of the Food Security Act of 1985, as amended, was amended by the Omnibus Budget Reconciliation Act of 1993 to specify the number of acres the Secretary of Agriculture shall enroll in the Wetlands Reserve Program (WRP). This interim rule amends the regulations governing the WRP to comply with statutory changes; expand the number of participating States from 9 States to 20 States; revise the process by which the Agricultural Stabilization and Conservation Service (ASCS) enrolls acreage in the WRP; and provide other changes based on experience in administering the 1992 Pilot WRP.

DATES: *Effective Date:* Interim rule effective January 27, 1994. *Comments:* Comments must be received on or before February 28, 1994, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, room 4714–S, Washington, DC 20013–2415; telephone 202–720–6221. Comments received may be inspected between 9 a.m. and 4 p.m., Monday through Friday, except holidays, in room 4714, South Agriculture Building,

United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lois Hubbard, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, room 4721–S, Washington, DC 20013–2415; telephone 202–720–9563.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule was submitted to the Office of Management and Budget for review under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have any significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement or environmental assessment is not needed. Copies of a final environmental evaluation are available upon request.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wetlands Reserve Program—10.072.

Paperwork Reduction Act

The information collection requirements of this interim rule at 7 CFR part 703 have been submitted to the Office of Management and Budget for expedited approval under provisions of 44 U.S.C. chapter 33. Approval of the forms is requested by February 1, 1994. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 39 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this interim rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR part 780 must be exhausted.

Discussion of Program

The current regulations in 7 CFR part 703, published as a final rule on June 4, 1992 (57 FR 23908), implemented the 1992 pilot WRP, which is authorized by title XII of the Food Security Act of 1985, as amended (1985 Act). Under the WRP, ASCS will purchase easements, in lump-sum payments, from persons owning cropland who voluntarily agree to restore and protect farmed wetlands, prior converted croplands, substantially altered lands, and eligible adjacent acres. Fund and acreage allocations will be provided to States based on landowner interest and other factors as determined by the Deputy Administrator, State and County Operations, ASCS, in consultation with the Soil Conservation Service and the Fish and Wildlife Service. Land eligible for enrollment in the WRP includes farmed wetlands, prior converted croplands, but not lands converted after December 23, 1985, or substantially altered lands, together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the wetland values merit inclusion in the program taking into account the cost of restoring the wetlands. ASCS is also permitted to include in the program:

(1) Farmed wetlands, prior converted croplands, or substantially altered lands and adjoining lands which are enrolled in the Conservation Reserve Program (CRP), as authorized by title XII of the 1985 Act, with the highest wetland functions and values and that are likely to return to production at the end of the CRP contract;

(2) Other wetlands that would not otherwise be eligible if it is determined that inclusion in the program would add to the value of the easement; and

(3) Riparian areas that link wetlands which are protected by easements or by some other device or circumstance that achieves the same purpose as an easement.

Landowners are not eligible to receive funding under both the Emergency Conservation Program (ECP) and the WRP on the same acreage. ECP payments received on acreage offered for WRP must be refunded, provided the ECP practice is still within its lifespan provisions, before any WRP payment will be disbursed.

This interim rule does not impact the Emergency Wetlands Reserve Program as authorized by the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 (Pub. L. 103–75).

Statutory Changes

During fiscal year 1992, WRP was authorized in the following States: California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, North Carolina, and Wisconsin. Section 1237 of the 1985 Act was amended by the Omnibus Budget Reconciliation Act of 1993 to specify that the Secretary shall enroll in the WRP a total of not less than 330,000 acres by the end of 1995 and a total of not less than 975,000 acres during 1991 through 2000. Congress has appropriated $66,675,000 to be used to enroll no more than 75,000 acres in fiscal year 1994.

This interim rule amends 7 CFR part 703 for WRP to:

(1) With respect to fiscal year 1994 only, identify enrollment availability in 20 States, including the nine States in the fiscal year 1992 pilot program;

(2) Provide for the appraisal for easements by licensed appraisers who are also approved by ASCS; and

(3) Make other changes based on experience gained from administering the pilot WRP in fiscal year 1992.

List of Subjects in 7 CFR Part 703

Administrative practices and procedures, Appraisals, Compliance procedures, Easements, Natural resources, Technical assistance, Wetlands Reserve Plan of Operations (WRPO).

Accordingly, 7 CFR part 703 is amended as follows:

PART 703—WETLANDS RESERVE PROGRAM

1. The authority citation for 7 CFR part 703 is revised to read as follows:

Authority: Public Law 99–198, 107 Stat. 739; 16 U.S.C. 3837 *et. seq.*

2. Section 703.1 is revised to read as follows:

§ 703.1 Applicability.

(a) The regulations in this part govern the Wetlands Reserve Program (WRP).

For fiscal year 1992 only, the WRP shall be available to producers in California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, North Carolina, and Wisconsin. For fiscal year 1994 only, the WRP shall be available in these nine States and in Arkansas, Illinois, Indiana, Kansas, Nebraska, Oregon, South Dakota, Tennessee, Texas, Virginia, and Washington. These states have been determined to have a high incidence of:

(1) Significant acreage of hydric cropland;

(2) Potential capacity of restoration;

(3) Diversity in kinds of wetlands; or

(4) Substantial benefits for migratory birds and other wildlife.

(b) Under the WRP, ASCS will accept voluntary offers of acreage for the purchase of easements from eligible persons who have eligible land with respect to which they agree to restore and protect farmed wetlands, prior converted croplands, or substantially altered lands, and eligible adjacent lands. Such voluntary easements will be for the purpose of restoring the hydrology and vegetation and protecting the functions and values of wetlands for wildlife habitat, water quality improvement, flood water retention, ground water recharge, open space, aesthetic values, environmental education, and other values determined appropriate by ASCS.

§ 703.2 [Amended]

3. In § 703.2, paragraph (f)(1) is amended by removing the words "cost of the restoration" and adding in their place, the words "costs of restoration and of acquiring the easement", and paragraph (f)(2) is amended by inserting the word "not" after the word "will".

4. Section 703.3(b) is amended by:

A. Revising the definitions of "Bid", "Non-permanent easement", "Participant", and "Permanent easement", and

B. Adding "Appraisal", "Preliminary plan", and "Substantially altered lands" to read as follows:

§ 703.3 Definitions.

* * * * *

(b) * * *

* * * * *

Appraisal means the agriculture value of the easement area on an "as is" bases as determined by an appraiser licensed by the State in which the appraisal is made and who is also approved by ASCS.

* * * * *

Bid, for the 1992 Pilot Program, unless the context indicates otherwise, means the total payment requested by the owner for granting an easement.

* * * * *

Non-permanent easement means a temporary deed restriction that is acquired by ASCS from an eligible landowner that requires the protection and maintenance of wetland restoration on designated acreage.

Participant means a landowner who has an approved contract.

Permanent easement means a deed restriction that lasts through perpetuity, acquired by ASCS from an eligible landowner, and which requires the protection and maintenance of wetland restoration practices on designated acreage.

* * * * *

Preliminary plan means a plan jointly developed by a landowner, SCS, and FWS to provide the landowner with an estimate of the extent and cost of restoration activities, and to obtain adequate information to prioritize intentions to participate.

* * * * *

Substantially altered lands means lands which have not been and are not now wetlands, but with a high degree of certainty will likely develop wetland characteristics as a result of natural flooding.

* * * * *

5. Section 703.5 is revised to read as follows:

§ 703.5 Maximum acreage limitation.

ASCS will attempt to enroll into the WRP during the 1991–2000 calendar years:

(a) A total of not less than 330,000 acres through 1995; and

(b) A total of not less than 975,000 acres through 2000.

6. Section 703.7 is amended by revising paragraphs (a)(1)(i), (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) to read as follows:

§ 703.7 Eligible land.

(a)(1) * * *

(i) Is wetland farmed under natural conditions, a farmed wetland, prior converted cropland except that converted lands shall not be eligible for enrollment if the conversion was not commenced prior to December 23, 1985, or substantially altered land; and

(2) * * *

(i) Have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 crop years 1986 through 1990, and have been capable of being cropped in 1992 or 1993;

(ii) If enrolled under a CRP contract, or under a Federal or State wetland restoration program without an easement of at least 30 years, have been planted to an agricultural commodity 2 of the 5 crop years, 1981 through 1985; and

(iii) Not be used as a mitigation site for Federal, State or local permit conditions or program participation requirements, or public or private mitigation banks.

* * * * *

§ 703.8 [Amended]

7. Section 703.8(a) is amended by revising "Converted wetlands" to read "Prior converted croplands".

8. Section 703.9(b) is revised to read as follows:

§ 703.9 Transfer of lands from the CRP to WRP.

* * * * *

(b) The application for such transfer into the WRP is agreed to by ASCS. If such transfer is requested by the owner and agreed to by ASCS, then the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon. Transfers from CRP to WRP after the second available WRP signup period will only be permitted if the owner agrees to refund all payments received under the CRP since the close of the second available WRP signup. Further, Emergency Wetlands Reserve Program signup periods are not considered WRP signup periods.

9. Section 703.10 is revised to read as follows:

§ 703.10 Easement priority.

(a) ASCS shall, to the extent practicable, in determining which areas to accept, take into account the cost of restoration, the cost of acquiring the easement, and environmental benefits which would be acquired through the purchase of the easement.

(b) In evaluating the value of obtaining an easement, different weights may be given to the factors for determining the priority by ASCS to accomplish the goals of the WRP.

(c) ASCS will rank the areas offered, based on environmental benefits relative to the government expenditure using the following factors for determining the priority:

(1) Habitat for migratory birds, threatened or endangered species, fish, and other wildlife;

(2) Wetland functions and values;

(3) Location significance;

(4) Wetland management requirements;

(5) Physical conditions of the site including the likelihood of developing or restoring wetland characteristics;

(6) Costs of restoration and of acquiring the easement; and

(7) Other environmental or cost factors as determined appropriate by ASCS to accomplish the goals of the WRP that may also incorporate ASCS State office goals and objectives.

10. Section 703.11 is amended by revising the section heading and revising paragraphs (b)(1), (b)(2), (c), and (d) to read as follows:

§ 703.11 Statement of intention to participate.

* * * * *

(b) * * *

(1) Obtains a preliminary plan; and

(2) Accepts the amount offered by ASCS in return for enrollment in WRP and agrees to other conditions for participation that may be required by ASCS, including the creation of an easement on the property. Such acceptance must be made no later than 15 calendar days after notification by ASCS of the purchase value of the easement unless a later date is agreed to by ASCS. The determination of which areas to accept shall be at the exclusive discretion of ASCS.

(c) A person submitting a statement of intention to participate shall not be obligated to accept an easement.

(d) An offer is considered accepted only if agreed to by all owners of the property or their duly authorized representative.

11. Section 703.12 is amended by:

A. Revising paragraph (a) introductory text,

B. Revising paragraphs (a)(1)(iv) and (a)(1)(v),

C. Adding paragraph (a)(1)(vi),

D. Revising paragraphs (a)(13), (a)(14), (a)(17), and (a)(18), and

E. Adding paragraph (a)(19) to read as follows:

§ 703.12 Obligations of the landowner.

(a) All owners of land who accept ASCS' offer to enroll land in WRP shall:

(1) * * *

(iv) Reserve to ASCS the right to permit such compatible uses of the easement area as may be identified in the WRPO;

(v) Reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner; and

(vi) Be filed in the appropriate land records office within 12 months from the end of the applicable signup period, unless otherwise determined by the Deputy Administrator. If not filed, ASCS shall terminate the offer to enroll in WRP.

* * * * *

(13) Not plant for harvest an agricultural commodity on the enrolled land subsequent to the filing of an easement;

(14) Not alter the vegetation, except to harvest already planted crops or forage, or the hydrology on such acres after the easement is filed, except as provided in the easement or WRPO;

* * * * *

(17) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO;

(18) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area; and

(19) Not allow WRP easements or restoration to be used as a mitigation site for Federal, State or local permit conditions or program participation requirements, or public or private mitigation banks.

* * * * *

12. Section 703.13 is amended by:

A. Revising paragraph (c)(1),

B. Removing paragraph (c)(4),

C. Redesignating paragraph (c)(5) as paragraph (c)(4) and revising redesignated paragraph (c)(4), and

D. Adding a new paragraph (e) to read as follows:

§ 703.13 Payments to landowners by ASCS.

* * * * *

(c)(1) ASCS shall pay, after an easement is filed, a lump-sum amount for the easement as determined by ASCS on eligible land. For all easements, ASCS shall withhold a portion of the payments that might otherwise be made pending completion of the restoration plan for the property and ASCS may condition any payment on satisfactory progress toward completion of the plan. ASCS shall pay no more than 10 percent per year of the total purchase price for the easement pending completion of the restoration of the wetlands;

* * * * *

(4) No easement payment may be made which would exceed the total amount offered for the property and payments may only be made if the person on whose account the payment is to be made:

(i) Has agreed to all terms and conditions of the program set out in this part;

(ii) Accepted the amount offered on the standard ASCS-approved form for the WRP; and

(iii) Is in full compliance with the terms and conditions of the WRP easement except to the extent that relief is authorized by this part and is approved under guidelines issued by the Deputy Administrator.

* * * * *

(e) Landowners may not receive payment under ECP and WRP on the same acreage. ECP payments shall be refunded, provided the ECP practice is within the required lifespan provisions, before a WRP payment will be disbursed, unless otherwise determined by the Deputy Administrator.

13. Section 703.15 is amended by revising paragraphs (a), (b)(2), and (d) to read as follows:

§ 703.15 Wetlands reserve plan of operations.

(a) Prior to filing an easement to enroll land in the WRP, the landowner must have obtained an ASCS approved WRPO for the land.

* * * * *

(b)(2) Specify the manner in which the farmed wetlands or prior converted croplands included in the enrolled land shall be restored, operated, and maintained to accomplish the goal of the program together with other practices which may be necessary or appropriate to accomplish the goals of the program, including, where appropriate:

* * * * *

(d) The WRPO must be signed by SCS, FWS, CD, ASCS, and the landowner before an easement is filed. If agreement between SCS and FWS at the local level is not reached within 20 calendar days of acceptance of the appraisal by the landowner, the WRPO shall be developed by the State Conservationist of SCS in consultation with FWS.

* * * * *

14. Section 703.17(c) is revised to read as follows:

§ 703.17 Transfer of land.

* * * * *

(c) Any transfer of the property prior to the filing of the easement shall void any statement of intention to participate and WRP contract, unless the new owner agrees to be a party to the intention to participate or the contract within 60 calendar days of the recordation of the deed transferring the land to the new owner, or as otherwise determined by the Deputy Administrator.

15. Section 703.25(c) is added to read as follows:

§ 703.25 Appeals.

* * * * *

(c) An appraisal and supporting documentation used by ASCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of ASCS.

Signed at Washington, DC, on January 14, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 94–1683 Filed 1–26–94; 8:45 am]

BILLING CODE 3410–05–P

Farmers Home Administration

7 CFR Parts 1902 and 1930

RIN 0575–AB31

Supervised Bank Accounts and Multi-Housing Reserve Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to require Multi-Family Housing (MFH) reserve accounts be subject to countersignature by an Agency official before funds can be withdrawn. Internal Agency reviews and audits conducted by the Office of the Inspector General (OIG) indicate reserve funds are being improperly used. The intended effect of this action is to curtail reserve fund abuses.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Vollmer, Senior Loan Specialist, Multi-Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Washington, DC, 20250, telephone (202) 720–1060.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this final rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Consultation

The programs affected are listed in the Catalog of Federal Domestic Assistance under Numbers 10.405—Farm Labor Housing Loans and Grants, 10.415—Rural Rental Housing Loans, and 10.427—Rural Rental Assistance Payments, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 59 FR 14088, April 10, 1985)

Environmental Impact Statement

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

Civil Justice Reform

This regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

Discussion

The Agency is improving FmHA oversight of MFH reserve accounts by requiring them to be subject to countersignature in a supervised account. Reserve accounts were previously required to be funded and used in accordance with Agency regulations, which already required the prior consent of the Agency prior to withdrawing reserve funds. However, internal Agency reviews and audits conducted by the Office of the Inspector General (OIG), highlighted various violations of Agency regulations and prompted the need for this final rulemaking action.

Among the most common concerns uncovered to date include the withdrawal of reserve funds without Agency consent, funds being pledged as security for other loans without Agency knowledge, withdrawal of interest earned on reserve funds for non-project purposes, lenders withdrawing funds for application on other defaulted loans, reserve funds withdrawn at a lending institution for application on other debts, and reserve accounts held at a lending institution for a short period of time before transferring to another institution.

The Agency expects to curtail reserve fund abuses by shifting emphasis to compliance through procedures aimed at preventing abuses (e.g., requiring the countersignature of Agency officials for withdrawal of reserve funds which are to be placed in a supervised account). The Agency's earlier procedures relied on oversight through monitoring routines, with the threat of potential punitive measures being imposed should violations be discovered.

The Agency solicited comments concerning the impact of the proposed rules on those holding reserve funds in money market accounts, bonds, or financial holdings other than in checking or savings accounts in federally insured institutions. The prior rulemaking action also mentioned that the Agency is aware that the proposed rule may result in some borrowers having to pay financial fees or penalties, which will erode reserve funds, and is concerned that such adverse impacts be minimized to the extent practical. The Agency also solicited other alternative approaches to curtail reserve account abuses. The Agency desires to ensure that the rules to reduce reserve account abuses are met in a practical manner without inadvertently imposing severe financial hardship on existing borrowers.

Discussion of Comments

The proposed rule was published in the **Federal Register** (57 FR 39631–39635) on September 1, 1992, providing for a 60-day comment period ending November 2, 1992. The Agency received 25 comments in response to its proposed rulemaking action. A high number of commentors indicated the rulemaking was not needed because existing regulations were adequate if properly enforced. Some commentors were supportive of the rulemaking action. Comments were received about the potential abuse of the authority granted to FmHA field representatives, that the rulemaking action would cause undue delays for approval, impose more work on existing staff, and possibly warrant requiring fidelity bonds by Agency personnel. Some commentors suggested alternatives to the proposed rulemaking action, such as requiring all reserve funds be remitted to the Government for holding under its accounting system until such time as a request is approved for a withdrawal, requiring cosignatories only for problem

accounts, requiring only some reserve funds to be subject to withdrawal, relying on account statements from financial institutions only, and withholding any authorized return on owners' investment for any year in which reserve accounts abuses occur.

The Agency considered the various alternatives and determined the proposed rulemaking action was needed and would not impose an undue hardship on borrowers. The alternatives suggested did not warrant adoption by the Agency. The Agency does not deem it wise to require reserves to be remitted to the Government, and also finds such an alternative to be administratively undesirable, in part because the considerable accounting software modifications needed would make it cumbersome to implement. Requiring co-signatures only for problem accounts is not attractive because it does not fully accomplish an Agency objective of ensuring abuses are prevented, rather than relying on punitive measures. The Agency considers its existing policies to be adequate to impose appropriate punitive measures for those who are trying to meet program objectives; however, abuses are still occurring and preventive steps are deemed necessary. Relying on added review of statements from financial institutions does not fully accomplish an Agency objective of ensuring abuses are prevented, rather than increasingly relying on Agency monitoring to discover and punish abuses.

A high number of commentors indicated that it was important that the Agency be required to act timely on requests for reserve fund withdrawals, especially where emergency repairs are needed. The Agency expects its employees to take timely action on reserve account withdrawal requests, especially where emergency cases arise. The Agency normally expects such requests to be acted on within 5 working days of the request (See 7 CFR part 1930, subpart C). However, the Agency does not agree that this is a valid reason to drop the proposed countersignature provisions.

Agency regulations have long required prior consent before reserve account funds are used. When circumstances arose where emergency repairs were needed during non-federal working hours for which no cash was on hand to pay for the repairs, operators ensured such repairs were made using commonly available business practices. Operators can normally request the work be billed for payment within 30 days, or that the work be paid via the extension of credit arrangements. Such work is then able to be repaid at a later date, either through the authorized release of reserve funds for authorized purposes, or through an alternative revenue source such as project rents. However, the Agency recognized the need to permit the post approval of commitments made (e.g., work committed under credit arrangements, etc.) in emergency cases. The Agency modified 7 CFR part 1930, subpart C at paragraph XIII B 2 c (5) as a result of similar comments in a separate but related rulemaking action to accommodate such treatment.

A large number of respondents also recommended requiring at least two Agency employees to be authorized to countersign for reserve account withdrawals to ensure that prompt action can be taken should employees be on travel or leave. Although the Agency understands it may be desirable to ensure that at least two officials are authorized to countersign for reserve account withdrawals, it may be impractical to require multiple counter-signatures by authorized Agency officials in some circumstances. The Agency does not object to accommodating multiple counter-signatures. However, it does not desire to require multiple signatures, in part, because normal business practices should not demand extremely prompt action on reserve withdrawal requests even when emergency situations occur. There are ample means of handling emergencies in a prompt manner other than by relying solely on the immediate access to reserve account funds. Also, some FmHA offices do not have two qualified employees to authorize reserve fund withdrawals.

The Agency received a number of comments regarding the use of reserve accounts. The information published in the reserve section was basically the same as published in a separate, but related, prior rulemaking action on 7 CFR part 1930, subpart C. Changes resulting from that rulemaking action were separately addressed.

The wording proposed at paragraph XIII B 2 c (2) of Exhibit B of part 1930, subpart C, is being adopted with a modification of the implementation date. The Agency is modifying the effective date to be 180 days after publication of the final rule instead of 60 days. This was deemed necessary because of the significant number of commentors who indicated that establishing accounts requiring countersignature by Agency officials would be cumbersome to implement, especially if implemented over a short timeframe. The Agency agrees and is providing for a longer implementation period. The paragraph also provides that reserve funds held just prior to the effective date, in instruments which are subject to monetary penalties for early withdrawal, may be temporarily held for the time needed to avoid such penalties.

A comment was received concerning whether borrowers whose accounts were established on or before October 27, 1980, would be subject to a supervised account for reserve account funds, since these accounts were not subject to the required account standards set out in FmHA regulations for loans approved after October 27, 1980. The Agency intends all RRH, RCH, and all LH borrowers operating projects (e.g., all LH borrowers except on-farm type borrowers) to establish a supervised account for reserve funds.

Comments received in conjunction with the prior rulemaking changes for 7 CFR part 1930, subpart C, suggested reserve accounts be permitted to be invested in other than federally insured institutions and readily marketable obligations of the United States Treasury. The Agency agreed to make some expansion for MFH reserve accounts as prescribed in 7 CFR part 1930, subpart C. Consequently, it is necessary to make a number of technical changes to 7 CFR part 1902, subpart A to be compatible with these principles. Those changes would have necessitated extensive changes to numerous paragraphs in the existing regulation. Therefore, the Agency determined the public would be better served to have a separate section covering all regulations governing the MFH reserve accounts, instead of providing extensive exceptions in numerous sections of the existing regulation. Section 1902.4 was added to the regulation, taking into consideration the comments for improvements recommended by the public.

In addition, a number of recommendations were offered to improve the technical implementation of any regulations resulting from the prior rulemaking action. Comments indicated that using the term "bank statements" when discussing MFH reserve accounts was not appropriate. The Agency agrees and avoided this wording when used in conjunction with MFH reserve accounts.

A commentor also desired clarification as to whether originals or copies of account activity statements are expected. The Agency will accept either for MFH reserve accounts. A commentor also desired clarification as to when the MFH supervised account activity statements will be provided to the Agency. The Agency normally will not need account activity statements. Accordingly, the Agency made changes

to clarify this intent. Commentors also were concerned about the need and frequency of providing MFH reserve account deposit information to the Agency. The Agency normally will not need deposit documentation. Accordingly, the Agency made changes to clarify this intent.

It was recommended that proposed rulemaking wording for § 1902.1(k) be modified, since it states that the "Interest-Bearing Deposit Agreement" be executed in conjunction with Form FmHA 1940–1. The Agency agrees that the "Interest-Bearing Deposit Agreement" need not be executed when MFH reserve accounts are involved. The Agency avoided referencing this form when it consolidated all the MFH reserve account provisions in § 1902.4.

A commentor indicated that the proposed revision to § 1902.2(a)(6) is not appropriately located, and suggested adding another paragraph to cover the treatment of MFH accounts at § 1902.2(a). The Agency determined that the proposed clarifying wording is appropriate to ensure it is understood that MFH accounts are to be kept in supervised accounts as long as the borrower is indebted to the Agency. However, the Agency also agrees that additional coverage would help convey that MFH reserve funds must be withdrawn for disbursement for an authorized purpose. Consequently, the Agency consolidated these related provisions into § 1902.4.

Also, commentors suggested removing the word "checking" where it occurs throughout § 1902.14, in part because credit unions and savings accounts may also be used when MFH reserve accounts are being established. The Agency agrees and is dropping the word "checking" from the section governing MFH reserve funds.

List of Subjects

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Reporting and recordkeeping requirements.

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

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for part 1902 continues to read as follows:

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

Subpart A—Loan and Grant Disbursement

2. The heading of subpart A to part 1902 is revised to read as follows:

Subpart A—Disbursement of Loan, Grant, and Other Funds

3. Section 1902.1 is amended by adding introductory text to read as follows:

§ 1902.1 General.

This subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for disbursement of funds under the Loan Disbursement System (LDS), in establishing and using supervised bank accounts, and in placing Multi-Family Housing (MFH) reserve accounts in supervised bank accounts. The LDS system provides for disbursement of funds on an as needed basis to substantially reduce interest costs to FmHA borrowers, U.S. Treasury, and FmHA.

* * * * *

4. Section 1902.4 is added to read as follows:

§ 1902.4 Establishing MFH reserve accounts in a supervised bank account.

(a) *General Requirements.* All MFH borrowers required to maintain reserve accounts must place the reserve accounts in a supervised bank account(s) which meets the following requirements:

(1) *Countersignature requirements.* The reserve account must require that any funds withdrawn be countersigned by an authorized FmHA official.

(2) *Restrictions on collateral.* The financial institution holding the reserve account must ensure that the funds are not pledged or taken as security without the Agency's prior consent.

(3) *Interest bearing.* The reserve account funds are encouraged to be maintained in an interest-bearing account. The "Interest-Bearing Deposit Agreement" set out in Exhibit B of this subpart is not required to be used for reserve accounts.

(4) *Restricted investments.* Reserve funds must be placed in investments authorized in subpart C of part 1930 of this chapter. The authorized investments are deemed to be of acceptable risk such that the potential for any loss is minimal.

(5) *Financial institutions.* The reserve account must be maintained in authorized financial institutions set out in subpart C of part 1930 of this chapter (e.g., banks, savings and loan institutions, credit unions, brokerage firms, mutual funds, etc.). Generally, any financial institution may be used provided invested or deposited funds are insured to protect against theft and dishonesty. The reserve account funds need not be Federally insured. However, if Federally insured, any amount held above the Federal insurance ceilings established must be backed by a pledge of collateral from the financial institution, or otherwise covered by non-federal insurance against theft and dishonesty.

(6) *Rules where multiple projects are involved.* A reserve account(s) must be maintained for each borrower. When a borrower owns multiple projects, reserve accounts may be established for each project. A single reserve account may also be established by a borrower owning multiple projects, provided the conditions set out in subpart C of part 1930 of this chapter are met.

(7) *Term.* Reserve accounts are expected to be kept for the full term of the loan.

(b) *Deposits and account activity statements.*

(1) *Deposits.* Generally, the FmHA will not require the review or approval of deposits or the use of Forms FmHA 402–1 or FmHA 402–2.

(2) *Account activity statements.* Generally, the FmHA will not monitor or reconcile the reserve account activity statements issued periodically by the financial institutions holding the funds. FmHA will monitor reserve account levels through budget reports, audits, and Agency reserve tracking systems. If disputes arise or the borrower is in violation of Agency regulations, the Agency may require account activity statements. When account activity statements are sought, it will normally be sufficient to obtain the statement which reflects balances as of the last activity statement ending period. Form FmHA 402–2 is not required to be used.

§§ 1902.17–1902.49 [Added and reserved]

5. Sections 1902.17 thru 1902.49 are added and reserved.

6. Section 1902.50 is added to read as follows:

§ 1902.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0158. Public reporting

burden for this collection of information is estimated to vary from 5 minutes to 1½ hours per response, with an average of 0.42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0158), Washington, DC 20503.

PART 1930—GENERAL

7. The authority citation for part 1930 continues to read as follows:

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

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

8. The introductory text of paragraph *XIII* B 2 c of Exhibit B of subpart C is revised to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

XIII Accounting and Reporting and Financial Management Analysis:

* * * * *

B. * * *

2. * * *

c. *Reserve account.* The reserve account is a required account subject to the requirements set out in this paragraph. The borrower will initiate monthly deposits in this project account, preferably an interest bearing account, starting the same month the first loan payment is due FmHA. As projects age, the required reserve account level may be adjusted to meet anticipated "life-cycle" needs, including equipment and facility replacement costs, by amending the loan agreement/resolution. All RRH, RCH, and LH borrowers operating projects (i.e., all LH borrowers exclusive of those on-farm type LH borrowers) are required to establish a reserve account. Effective as of July 26, 1994, reserve funds will be required to be placed in a supervised account. The provisions of subpart A of part 1902 of this chapter apply. Reserve funds on deposit just prior to this date in instruments which are subject to monetary penalties for early withdrawal may be temporarily held for the time needed to avoid such penalties.

* * * * *

Dated: October 12, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–1602 Filed 1–26–94; 8:45 am]

BILLING CODE 3410–07–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB23

Statement of Policy on Risk-Based Capital: Multifamily Housing Loans

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule implements section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA) and amends the FDIC's risk-based capital guidelines to assign a 50 percent risk weight to loans secured by multifamily residential properties (multifamily housing loans) that meet certain prudential criteria and to any securities collateralized by such loans. At present, such loans are assigned to the 100 percent risk weight category. This amendment also satisfies a requirement contained in section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) concerning the application of the FDIC's risk-based capital guidelines to multifamily housing loans. The final rule also addresses the section 618(b) requirement that the FDIC's risk-based capital guidelines take into account loss sharing arrangements in connection with sales of multifamily housing loans. The final rule is intended to facilitate prudent lending for multifamily housing purposes.

EFFECTIVE DATE: This final rule is effective January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898–8906.

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 1989, the Board of Directors of the FDIC adopted a Statement of Policy on Risk-Based Capital (12 CFR part 325, appendix A, later redesignated as appendix A to subpart A of part 325) which is applicable to all insured state nonmember banks supervised by the FDIC (54 FR 11500). The Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB) have also adopted similar risk-based capital standards for the banks under their supervision. The three agencies based their risk-based capital standards on the report on "International Convergence of Capital Measurement and Capital Standards" (the Basle Accord) issued by the Basle Committee on Banking Supervision in July 1988. In addition, the Office of Thrift Supervision (OTS) has implemented risk-based capital rules for savings associations.

Under the FDIC's risk-based capital framework, a bank's balance sheet assets and the credit equivalent amounts of its off-balance sheet items are assigned to one of four broad risk categories—0, 20, 50, or 100 percent—according to the obligor or, if relevant, the guarantor or the nature of the collateral. At present, absent qualifying collateral or guarantees, claims on private sector obligors (other than depository institutions) are generally assigned to the 100 percent risk weight category under the risk-based capital guidelines issued by the FDIC, the FRB, the OCC, and the OTS (collectively, the federal banking agencies). Thus, multifamily (five or more dwelling units) housing loans and privately-issued securities collateralized by multifamily housing loans are normally accorded a 100 percent risk weight by the FDIC.[1]

However, under the Basle Accord, "loans fully secured by mortgage on residential property which is rented or is (or is intended to be) occupied by the borrower" are permitted to be assigned a 50 percent risk weight. Nevertheless, the Accord admonishes bank supervisory authorities to apply this "concessionary weight * * * restrictively and in accordance with strict prudential criteria. This may mean, for example, that in some member countries the 50 per cent. weight * * * will only be applied where strict, legally-based, valuation rules ensure a substantial margin of additional security over the amount of the loan." To date, the 50 percent risk weight has been accorded only to loans secured by one-to-four family residential properties that meet certain prudential criteria.

[1] Multifamily housing loans are also normally accorded a 100 percent risk weight under the risk-based capital guidelines of the FRB and OCC. However, OTS regulations accord a 50 percent risk weight to "qualifying multifamily mortgage loans." This type of loan is defined as a "loan on an existing property consisting of 5–36 dwelling units with an initial loan-to-value ratio of not more than 80% where an average annual occupancy rate of 80% or more of total units has existed for at least one year."

Section 618(b)(1) of the RTCRRIA requires the federal banking agencies to amend their risk-based capital guidelines to assign multifamily housing loans that meet certain criteria and any security collateralized by such loans to the 50 percent risk weight category. In order for a multifamily housing loan to qualify for this preferential capital treatment, the loan must be secured by a first lien on a multifamily residential property, the loan-to-value ratio for the property must not exceed 80 percent (75 percent if the rate of interest on the loan changes over the term of the loan), the ratio of annual net operating income generated by the property (before debt service) to annual debt service on the loan must not be less than 120 percent (115 percent if the rate of interest on the loan changes over the term of the loan), the amortization period for principal and interest on the loan must not exceed 30 years, the loan must have a minimum maturity for principal repayment of not less than seven years, and the loan must have had timely payment of principal and interest in accordance with the loan terms for at least one year. Section 618(b)(1) further provides that a multifamily housing loan must meet "any other underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions."

In addition, section 305 of the FDICIA (Pub. L. 102–242, 105 Stat. 2355 (12 U.S.C. 1828 note)) in part requires the federal banking agencies to amend their risk-based capital standards for insured depository institutions to ensure that those standards "reflect the actual performance and expected risk of loss of multifamily mortgages."

Section 618(b)(2) of the RTCRRIA requires the FDIC to amend its risk-based capital standards:

> To provide that any loan fully secured by a first lien on a multifamily housing property that is sold subject to a pro rata loss sharing arrangement * * * shall be treated as sold to the extent that loss is incurred by the purchaser of the loan.

This section then defines the term "pro rata loss sharing arrangement" as "an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on a pro rata basis."

Section 618(b)(3) of the RTCRRIA then directs the FDIC to amend its risk-based capital framework "to take into account other loss sharing arrangements in connection with the sale" of multifamily housing loans "for purposes of determining the extent to which such loans shall be treated as sold." An "other loss sharing arrangement" is then defined as "an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis."

II. Description of Proposed Rule

On April 1, 1992, the FDIC published a proposed rule designed to implement the provisions of section 618(b) of the RTCRRIA (57 FR 11010). The preamble to the proposed rule further noted that implementation of the proposal would also satisfy the provision of section 305 of the FDICIA concerning the application of the FDIC's risk-based capital guidelines to multifamily housing loans.

Criteria for Multifamily Housing Loans and Securities

In order to achieve the safety and soundness objective set forth in section 618(b)(1), the proposal observed that it is imperative that appropriate criteria be established to distinguish between multifamily housing loans that are accorded a 100 percent risk weight and those that are of sufficiently high quality to warrant a more favorable 50 percent risk weight. In this regard, the proposal noted that data reported in the Consolidated Reports of Condition and Income filed by all FDIC-insured commercial banks revealed that net charge-offs of multifamily housing loans by such banks for calendar year 1991 were 2.01 percent of multifamily housing loans outstanding. The percentage of multifamily housing loans that were 90 days or more past due or in nonaccrual status as of December 31, 1991, for all FDIC-insured commercial banks was 5.64 percent of multifamily housing loans outstanding. In contrast, for single family housing loans, which the FDIC's risk-based capital guidelines assign to the 50 percent risk weight category if they meet certain criteria, the net charge-off rate for calendar year 1991 was only 0.20 percent of loans outstanding. Single family housing loans that were 90 days or more past due or in nonaccrual status as of December 31, 1991, for all FDIC-insured commercial banks were 1.65 percent.

Thus, the FDIC's proposed rule lowering the risk weight for certain multifamily housing loans incorporated the specific statutory criteria described in section I. above and also included four additional safety and soundness criteria that multifamily housing loans would have to meet in order to receive a reduced risk weight. These four criteria, which were developed by the FDIC after consulting with the other federal banking agencies, provided that: (1) The loan-to-value ratio used to determine the eligibility of a multifamily housing loan for the lower risk weight would be the ratio at the time the loan was originated; (2) the loan must not be more than 90 days past due or carried in nonaccrual status; (3) the average annual occupancy rate of the property securing the loan must have been at least 80 percent for at least one year; and (4) the loan must have been made in accordance with prudent underwriting standards. Taken together, the statutory and proposed additional criteria were intended to ensure that only those multifamily housing loans whose future repayment prospects are such that they expose an institution to relatively low levels of credit risk would receive the more favorable 50 percent risk weight. These criteria were also intended to ensure that such loans have risk characteristics that are consistent with the Basle Accord's provisions regarding the assignment of a preferential risk weight.

As for securities collateralized by multifamily housing loans, the FDIC observed in the preamble to the proposed rule that its risk-based capital guidelines presently accord a 50 percent risk weight to privately-issued mortgage-backed securities that are "backed by a pool of conventional mortgages," each of which meets the criteria "for inclusion in the 50 percent risk weight category at the time the pool is originated." Such securities must also meet a number of safety and soundness criteria that are specified in the guidelines. Therefore, by operation of the existing language on privately-issued mortgage-backed securities in the FDIC's risk-based capital guidelines, the proposal stated that the explicit addition of multifamily housing loans to the 50 percent risk weight category would have the effect of lowering to 50 percent the risk weight for privately-issued mortgage-backed securities collateralized by such loans, provided the multifamily housing loans that back these securities qualify for a 50 percent risk weight at the time the securities are originated.[2]

Loss Sharing Arrangements

The FDIC's existing risk-based capital guidelines do not specifically address how asset sales involving various forms

[2] In addition, in general, the FDIC's risk-based capital guidelines currently assign a 20 percent risk weight to mortgage-backed securities collateralized by multifamily housing loans that have been issued or guaranteed by a U.S. Government-sponsored agency. The final rule does not change the treatment of these mortgage-backed securities.

of loss sharing arrangements are to be handled by a selling bank. This is because, for purposes of applying the risk-based capital standards, a bank's balance sheet assets are determined in accordance with the instructions for the preparation of the Consolidated Reports of Condition and Income (Call Report). Thus, the instructions for preparation of Consolidated Reports of Condition and Income are the source for guidance on determining the extent to which assets such as multifamily housing loans are treated as sold when there is a loss sharing arrangement covering the assets. The proposed rule therefore sought to implement the section 618(b) requirement that the FDIC's risk-based capital guidelines take into account loss sharing arrangements on sales of multifamily housing loans by referencing the relevant Call Report instructions.

With respect to sales subject to pro rata loss sharing arrangements, the Call Report instructions direct banks to report these transactions in a manner that is consistent with the language of section 618(b)(2) quoted in section I above. These instructions state that:

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

Thus, the FDIC proposed to amend its risk-based capital guidelines to provide in a footnote an explanation of this treatment for sellers of multifamily housing loans subject to pro rata loss sharing arrangements.

For Call Report purposes, in general, other transfers of multifamily housing loans are to be reported as sales of the transferred assets only if the selling institution "(1) retains no risk of loss from the assets transferred resulting from any cause and (2) has no obligation to any party for the payment of principal or interest on the assets transferred" resulting from any cause. The FDIC's risk-based capital framework has taken other loss sharing arrangements into account in this manner when determining the extent to which assets such as multifamily housing loans are treated as sold and excluded from the balance sheet assets that must be risk weighted. In order to implement section 618(b)(3), the FDIC proposed to amend its risk-based capital guidelines to explicitly disclose this treatment of other loss sharing arrangements in a footnote.

III. Comment Summary

The FDIC received 21 comment letters addressing various aspects of its proposed rule. Letters were submitted by 12 depository institutions or holding companies, four trade associations representing depository institutions, three trade associations representing housing and home building interests, and one secondary mortgage market maker. One comment document was filed by a group of individuals.

Of the 21 letters received, six respondents agreed with the proposal to lower the risk weight for multifamily housing loans and offered no suggestions for changes to it. Another 12 commenters generally found the FDIC's proposal acceptable, but recommended certain changes in the eligibility criteria or the treatment of loss sharing arrangements. Three respondents objected to the proposal to lower the risk weight for multifamily housing loans, although two of these commenters made suggestions for improving the eligibility criteria. Three commenters, two of whom supported the proposal and one who opposed it, expressed concern that Congress had mandated that the regulatory agencies lower the risk weight for a specific loan category.

Loan-to-Value Ratios

Although the proposal called for the loan-to-value ratio requirement to be met at the origination of a multifamily housing loan, the FDIC specifically requested comment on whether, in light of the other criteria that a multifamily housing loan must also meet, (1) a loan that does not satisfy the loan-to-value ratio requirement at origination should be permitted to do so later during the life of the loan and, if so, under what circumstances, and (2) a loan that satisfies this requirement at origination but fails to do so at a later date should thereafter be ineligible for a 50 percent risk weight.

These issues were addressed by five respondents. Two respondents suggested that the loan-to-value ratios of "large" multifamily properties be recalculated every two years to determine whether the required ratio continues to be met. The other three respondents stated that multifamily housing loans not meeting the loan-to-value ratio requirement at origination should be eligible for the 50 percent risk weight if the ratio later decreases as a result of either principal payments or increased property values. However, only one of these three also recommended that multifamily housing loans should have their risk weights increased from 50 to 100 percent if their loan-to-value ratios rise above the levels set forth in the proposal subsequent to their origination. In contrast, another of these three commenters stated that a multifamily housing loan whose loan-to-value ratio increases after origination should be eligible to retain its 50 percent risk weight as long as the remaining eligibility criteria continued to be met. Finally, one of these commenters expressed concern about the cost of obtaining appraisals if the final rule were to require frequent reappraisals to ensure that the loan-to-value ratio requirement continues to be satisfied over time.

After considering these comments and consulting with the other agencies, the FDIC has decided that the loan-to-value ratio requirement in the final rule should not be a one-time only test at origination. Rather, a multifamily housing loan that does not satisfy the loan-to-value ratio requirement at origination, but does so at a later date, should then receive the benefit of a more favorable risk weight (assuming the other eligibility criteria are also met). A multifamily housing loan whose loan-to-value ratio no longer meets the specified ratio requirement has a reduced margin of collateral protection and its relative risk has increased to a level that no longer justifies the loan's continued eligibility for a 50 percent risk weight.

Thus, the final rule makes the loan-to-value ratio requirement an ongoing eligibility criterion by stating that the ratio should be determined on the basis of the most current appraisal or evaluation of the property, whichever may be appropriate.[3] This approach is also intended to be consistent with the FDIC's regulations and guidelines for real estate lending and appraisals. Under these regulations and guidelines, a bank's written real estate lending policies must establish prudent underwriting standards, including loan-to-value limits. In addition, a bank's real estate appraisal and evaluation programs should include general criteria that identify when it is in the bank's interests to reappraise or reevaluate real estate collateral. Thus, the final rule does not mandate a specific frequency with which reappraisals and reevaluations of multifamily properties must be made, but relies instead on a

[3] At the origination of a loan to purchase an existing multifamily property, the lesser of the actual acquisition cost or value estimate would be used in the loan-to-value ratio.

bank's own policies and procedures in this area.

The specific loan-to-value ratios required by the proposed rule, i.e., 80 percent for fixed rate loans and 75 percent for adjustable rate loans, were addressed by two commenters. Each suggested that the same ratio should apply regardless of whether a loan has a fixed or adjustable rate. However, one of these commenters preferred using an 80 percent ratio for all multifamily housing loans while the other preferred a 75 percent ratio. The final rule retains the separate ratios for fixed and adjustable rate loans that were contained in the proposal. These ratios are taken directly from the statute.

In addition, two commenters indicated that multifamily housing loans that do not meet the loan-to-value ratio requirement but have additional collateral or credit enhancements such as mortgage insurance should be eligible for the 50 percent risk weight. The FDIC's risk-based capital standards formally recognize only certain forms of collateral and guarantees for purposes of risk-weighting assets and credit equivalent amounts of off-balance sheet items. The FDIC does not believe it would be appropriate to recognize additional forms of collateral and guarantees solely for multifamily housing loans.

Annual Occupancy Rate

Comments were received from three respondents on the proposed requirement, not mandated by the statute, that the average annual occupancy rate of the property securing the loan must have been at least 80 percent for at least one year. These commenters pointed out that the ongoing loan-to-value ratio and debt service coverage ratio requirements set forth in the statute should be sufficient to ensure that only high quality multifamily housing loans would qualify for the 50 percent risk weight. It was also indicated that information on occupancy rates is not regularly being obtained as part of the financial data that borrowers supply on the properties securing multifamily housing loans. Thus, the inclusion of an occupancy rate requirement in the final rule would impose an additional burden on both borrowers and lenders. The FDIC agrees with these commenters and has eliminated the proposed occupancy rate requirement from the final rule.

Properties Owned by Cooperatives and Nonprofit Organizations

Four commenters questioned the applicability of the eligibility criteria to properties owned by cooperative housing corporations and nonprofit organizations. In particular, the "operating income" concept included in the debt service coverage requirement was considered inappropriate because these types of properties, since they are not owned by investors seeking a return on their investments, are not operated to produce income. Accordingly, these commenters suggested that, for multifamily properties with a nonprofit form of ownership, a more flexible approach to meeting the debt service coverage ratio requirements set forth in the statute would be justified. The FDIC recognizes that the cash flow to service a loan secured by a multifamily property can come from "operating income" as well as from other sources. Therefore, the debt service coverage criterion in the final rule indicates that properties owned by cooperative housing corporations or nonprofit organizations must generate sufficient cash flow to provide protection to the bank comparable to that afforded by the debt service coverage levels set forth in the statute that are based on annual net operating income.

Repayment Performance

Two commenters stated that the FDIC's proposal to add a requirement that a multifamily housing loan must not be more than 90 days past due or carried in nonaccrual status in order to qualify for the 50 percent risk weight was unnecessary because of the statutory requirement that all principal and interest payments be made on a timely basis in accordance with the terms of the loan for at least one year. One of these commenters indicated that a loan on which timely payments have been made for at least one year "will not be more than 90 days past due and is unlikely to be in nonaccrual status" while the other suggested that the loan would be "in reasonably good shape, even it is technically ninety (90) days past due."

Although it may not have been clear from the proposal, the requirement that a loan not be 90 days or more past due or in nonaccrual status was intended to be an ongoing test that would have to be met at the time a multifamily housing loan was placed in the 50 percent risk weight category and thereafter. The FDIC's risk-based capital guidelines currently contain the same ongoing requirement for one-to-four family residential mortgages to qualify for the 50 percent risk weight. In contrast, the statutory requirement that timely contractual principal and interest payments must have occurred for at least one year before a multifamily housing loan can qualify for a 50 percent risk weight is a one-time requirement. To eliminate confusion, the final rule separately lists these two eligibility criteria and clarifies that timely payments must have been made for at least one year before a multifamily housing loan is placed in the 50 percent risk weight category.

Prudent Underwriting Standards

The proposal's final eligibility criterion required the multifamily housing loan to have been made "in accordance with applicable lending limits and other prudent underwriting standards." Two commenters asked what was meant by "prudent underwriting standards." Guidance for prudent real estate loan underwriting standards is outlined in appendix A to part 365 of the FDIC's rules and regulations, "Interagency Guidelines for Real Estate Lending Policies" (12 CFR part 365, appendix A), which was adopted by the FDIC in October 1992 (57 FR 62896, December 31, 1992).

A third commenter suggested that this criterion was unnecessary and that it should go without saying that a bank should comply with applicable lending limits. This commenter also questioned why lending limits were singled out in this criterion when compliance with many other statutory and regulatory requirements is expected during the underwriting of a loan. The FDIC has deleted the specific reference to lending limits in the final rule.

Optional Nature of Lower Risk Weight

One commenter who supported the proposal nonetheless requested that the FDIC ensure that banks are aware that, under the final rule, they have the option of assigning multifamily housing loans that meet the criteria specified in the rule to the 50 percent risk weight or continuing to treat such loans as 100 percent risk weight assets. One of the commenters who opposed the proposal did so because the cost associated with substantiating that a multifamily housing loan was eligible to be placed in the 50 percent risk weight category would exceed the benefit of the lower risk weight.

The FDIC has no intention of imposing this cost on banks that would prefer not to incur it. Thus, the FDIC wishes to reiterate that, at each bank's option, assets, including multifamily housing loans, and credit equivalent amounts of off-balance sheet items that are eligible to be assigned to a risk weight category lower than 100 percent may be included in a higher risk weight category (e.g., the 100 percent risk weight category) than the category to which the assets or credit equivalent

amounts are otherwise eligible to be assigned.

Loss Sharing Arrangements

Comment letters from two respondents addressed the treatment of loss sharing arrangements in connection with the sale of multifamily housing loans that was contained in the proposed rule. Both commenters agreed with the proposal's approach for handling a pro rata loss sharing arrangement (i.e., for the selling bank to treat the transfer as a sale to the extent that the purchaser shares with the seller on pro rata basis in any loss incurred), but took exception to the proposed treatment of other loss sharing arrangements. Under the proposal, other loss sharing arrangements were to be taken into account for purposes of determining the extent to which multifamily housing loans are treated by the selling bank as sold (and excluded from balance sheet assets) under the risk-based capital framework in the same manner as prescribed for reporting purposes in the Call Report instructions. Hence, multifamily housing loans sold subject to loss sharing arrangements on other than a pro rata basis would treat such loans as sold for risk-based capital purposes only if the selling bank retains no risk of loss from the loans transferred resulting from any cause and has no obligation to any party for the payment of principal or interest on the loans transferred resulting from any cause

One commenter indicated that, in lieu of the proposed treatment for other loss sharing arrangements, the selling institution "should retain capital in proportion to the risk retained but not for the whole loan." The other commenter who addressed loss sharing arrangements stated that the proposed treatment of other loss sharing arrangements does not "provide an accurate measure of risk exposure or appropriately tailored incentives," "may discourage lenders from limiting their recourse obligation," and is "inconsistent with the statutory requirement." This commenter recommended that the FDIC "adopt rules that distinguish different loss risks for non-pro rata arrangements, rather than the existing rule in the Call Reports" and offered suggested approaches for doing so. This commenter also acknowledged that the regulatory capital treatment of asset sales subject to loss sharing arrangements is an issue that goes beyond multifamily housing loans and requires a comprehensive solution.

The FDIC recognizes that the proposed rule on other loss sharing arrangements essentially treats all such arrangements in an identical manner regardless of the terms of the arrangement and, as a consequence, may not encourage banks that sell multifamily housing loans with recourse to limit their exposure to risk. However, these concerns extend to asset sales with recourse in general because of the broad scope of the Call Report instructions in this area and their relationship to the risk-based capital framework. The FDIC and the other banking agencies, under the auspices of the Federal Financial Institutions Examination Council, have been pursuing a more comprehensive resolution of the capital issues surrounding asset sales with recourse and other forms of credit enhancement. This interagency effort is seeking to develop revisions to the agencies' risk-based capital standards that will better distinguish between the degrees of risk in loss sharing arrangements involving asset sales in general, not just those involving multifamily housing loans. The FDIC expects that these revisions would be more likely to fully satisfy the intent of section 618(b)(3) with respect to other loss sharing arrangements than the approach taken in the proposed rule. Nevertheless, the FDIC does not wish to further delay the issuance of a final rule that lowers the risk weight for certain multifamily housing loans and provides guidance on the risk-based capital treatment of pro rata loss sharing arrangements while the interagency effort to address recourse issues is proceeding. Therefore, as an interim measure, the FDIC is adopting the treatment of other loss sharing arrangements as originally proposed.

Other Issues

Several commenters suggested changes to the proposed rule that would conflict with the requirements set forth in the statute. These suggestions included a lower debt service coverage ratio requirement, a shorter minimum maturity requirement, and a 75 percent rather than 50 percent risk weight for multifamily housing loans. These suggestions have not been adopted.

IV. Final Rule

After considering the comments received and consulting with the other agencies, the FDIC is adopting a final rule to implement section 618(b) of the RTCRRIA. The final rule will also satisfy that portion of section 305 of the FDICIA relating to the application of the FDIC's risk-based capital guidelines to multifamily housing loans.

The final rule adds a new paragraph on multifamily housing loans to the discussion of the types of assets accorded a 50 percent risk weight in the section of the FDIC's risk-based capital guidelines on risk weights for balance sheet assets (section II.C.). The new paragraph enumerates the criteria that a multifamily housing loan must satisfy in order to be eligible for this favorable risk weight. A conforming change has been made to the summary of risk weights and risk categories in table II of the guidelines.

The eligibility criteria contained in the final rule include those set forth in section 618(b) and two added by the FDIC based on the authority granted in the statute. These criteria are that the loan must be secured by a first lien on a multifamily residential property, the loan-to-value ratio for the property must not exceed 80 percent (75 percent if the rate of interest on the loan changes over the term of the loan), the ratio of annual net operating income generated by the property (before debt service) to annual debt service on the loan must not be less than 120 percent (115 percent if the rate of interest on the loan changes over the term of the loan), the amortization period for principal and interest on the loan must not exceed 30 years, the loan must have a minimum original maturity for principal repayment of not less than seven years, the loan must have had timely payment of principal and interest in accordance with the loan terms for at least one year before the loan is placed in the 50 percent risk weight category, the loan must not be 90 days or more past due or carried in nonaccrual status, and the loan must have been made in accordance with prudent underwriting standards

For purposes of satisfying the one year's timely repayment performance criterion in the case where the existing owner of a multifamily residential property refinances a loan on that property, the final rule provides that all principal and interest payments on the loan being refinanced must have been made on a timely basis in accordance with the terms of the loan for at least the preceding year. In this situation, all of the other eligibility criteria must also be met in order for the new loan to qualify for the 50 percent risk weight For example, the annual debt service required on the new loan would be used when determining whether the debt service coverage requirement has been satisfied

Under the final rule, the loan-to-value ratio requirement must be met based on the most current appraisal or evaluation of the property, whichever may be appropriate, and, at the origination of loans to purchase an existing property, the term "value" means the lesser of the actual acquisition cost or the estimate of

value for the property. In addition, the final rule explains that, to satisfy the debt service coverage requirement, a property owned by a cooperative housing corporation or nonprofit organization must generate sufficient cash flow to provide protection to the bank comparable to that specified in the statute.

The final rule also revises the existing paragraph addressing privately-issued mortgage-backed securities in the discussion of the types of assets assigned to the 50 percent risk weight category. The amendment clarifies that in order for a security backed by a pool of conventional mortgages on multifamily residential properties to be accorded a 50 percent risk weight, each underlying mortgage must meet the eligibility criteria described above at the time the pool is originated. A bank that purchases such a security will not be required to monitor the eligibility of each underlying mortgage on an ongoing basis to ensure that a 50 percent risk weight remains appropriate for the security. Instead, the security may remain in the 50 percent risk weight category as long as principal or interest payments on the security are not 30 days or more past due.

Finally, the final rule amends the FDIC's risk-based capital guidelines by stating in a footnote that a multifamily housing loan that is sold subject to a pro rata loss sharing arrangement is to be treated by the selling bank as sold (and excluded from balance sheet assets) to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. This means that, in such a transaction, the portion of the loan that is treated as sold by the selling bank is not subject to the risk-based capital standards. This footnote also provides explicit guidance on the risk-based capital treatment of sales of multifamily housing loans in which the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis. It states that these other loss sharing arrangements are taken into account for purposes of determining the extent to which such loans are treated by the selling bank as sold (and excluded from balance sheet assets) under the risk-based capital framework in the same manner as prescribed for reporting purposes in the instructions for preparation of the Consolidated Reports of Condition and Income. The instructions applicable to such transactions are contained in the Glossary entry for "sales of assets."

This final rule is effective January 27, 1994 The FDIC has determined that good cause exists to waive the customary 30-day delayed effective date since the rule relieves a restriction on insured state nonmember banks by permitting them to utilize a lower risk weight for eligible multifamily housing loans and securities collateralized by such loans in calculations of their risk-based capital ratios. In addition, insured state nonmember banks may choose to utilize this lower risk weight in their Consolidated Reports of Condition and Income for December 31, 1993.

V. Regulatory Flexibility Act Analysis

The FDIC certifies that the adoption of this amendment to its risk-based capital guidelines will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Accordingly, a regulatory flexibility analysis is not required.

The amendment will benefit insured state nonmember banks by reducing the minimum amount of capital that they are required to maintain for certain multifamily housing loans and securities collateralized by such loans. The proposal would apply equally to all insured state nonmember banks, regardless of size, and should not disproportionately affect a substantial number of small banks.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR part 325 as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix A to subpart A of part 325, footnotes 29 through 37 are redesignated as footnotes 32 through 40, respectively; a new paragraph is added between the first and second paragraphs of section II.C. category 3 and the existing second paragraph is revised; paragraphs (2) through (4) of table II. category 3 are redesignated as paragraphs (3) through (5), respectively; and a new paragraph (2) is added to table II. category 3 to read as follows:

Appendix A to Subpart A of part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

Category 3 * * *

This category also includes loans fully secured by first liens on multifamily residential properties,[29] provided that:

(1) The loan amount does not exceed 80 percent of the value[30] of the property securing the loan as determined by the most current appraisal or evaluation, whichever may be appropriate (75 percent if the interest rate on the loan changes over the term of the loan);

(2) For the property's most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120 percent (115 percent if the interest rate on the loan changes over the term of the loan) or in the case of a property owned by a cooperative housing corporation or nonprofit organization, the property generates sufficient cash flow to provide comparable protection to the bank,

(3) Amortization of principal and interest on the loan occurs over a period of not more than 30 years;

(4) The minimum original maturity for repayment of principal on the loan is not less than seven years;

(5) All principal and interest payments have been made on a timely basis in accordance with the terms of the loan for at least one year before the loan is placed in this category;[31]

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[29] The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. In addition, as provided in those instructions, a multifamily residential property loan that is sold subject to a pro rata loss sharing arrangement is treated by the selling bank as sold (and excluded from balance sheet assets) to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. In such a transaction, from the standpoint of the selling bank, the portion of the loan that is treated as sold is not subject to the risk-based capital standards. In connection with sales of multifamily residential property loans in which the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis, these other loss sharing arrangements are taken into account for purposes of determining the extent to which such loans are treated by the selling bank as sold (and excluded from balance sheet assets) under the risk-based capital framework in the same manner as prescribed for reporting purposes in the instructions for preparation of the Consolidated Reports of Condition and Income.

[30] At the origination of a loan to purchase an existing property, the term "value" means the lesser of the actual acquisition cost or the estimate of value set forth in an appraisal or evaluation, whichever may be appropriate.

[31] In the case where the existing owner of a multifamily residential property refinances a loan on that property, all principal and interest payments on the loan being refinanced must have been made on a timely basis in accordance with the

(6) The loan is not 90 days or more past due or carried in nonaccrual status; and

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

Also included in this category are privately-issued mortgage-backed securities provided that: (1) The structure of the security meets the criteria described above for "Mortgage-Backed Securities;" (2) if the security is backed by a pool of conventional mortgages on one-to-four family residential or multifamily residential properties, each underlying mortgage meets the criteria described in this section for inclusion in the 50 percent risk weight category at the time the pool is originated; (3) if the security is backed by privately-issued mortgage-backed securities, each underlying security qualifies for inclusion in the 50 percent risk category; and (4) if the security is backed by a pool of multifamily residential mortgages, principal or interest payments on the security are not 30 days or more past due.[32]

* * * * *

Table II.—Summary of Risk Weights and Risk Categories

* * * * *

Category 3 * * *

(2) Loans fully secured by first liens on multifamily residential properties that have been prudently underwritten and meet specified requirements with respect to loan-to-value ratio, level of annual net operating income to required debt service, maximum amortization period, minimum original maturity, and demonstrated timely repayment performance.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 14th day of December, 1993.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–1709 Filed 1–26–94; 8:45 am]

BILLING CODE 6714–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB45

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a final rule amending its regulations to allow Farm Credit System (FCS) institutions to document the existence of a first lien on the security for long-term real estate mortgage loans by obtaining title insurance or an attorney's certification. The current regulation requires that an attorney's certification be obtained for every long-term mortgage loan in order for that loan to qualify as collateral for FCS debt obligations. The regulation is being amended because title insurance has become the prevailing method used by the mortgage lending industry to ensure clear title. Additionally, the revised regulation permits FCS institutions greater flexibility in determining which method for validating first lien position (an attorney's certification or title insurance) provides the institution the most cost-effective and efficient protection.

EFFECTIVE DATE: The regulation shall become effective upon expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

James M. Morris, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1.10(a)(2) of the Farm Credit Act of 1971, as amended (Act), requires that long-term mortgage loans made by Farm Credit Banks (FCBs) under section 1.7 of the Act, or by associations under sections 1.7 and 7.6 of the Act, "be secured by first liens on interests in real estate of such classes as may be prescribed by regulations of the Farm Credit Administration." At present, § 615.5060 requires that an attorney's certification be obtained for long-term mortgage loans if such loans are to qualify as collateral for FCS debt obligations. However, title insurance is the prevailing method for ensuring clear title in the mortgage lending industry and is becoming more commonplace in FCS lending. Title insurance can provide a lender with protection that is comparable to an attorney's certification and in some instances may be more timely and less expensive to obtain. Under the present § 615.5060, even if FCS lenders obtain title insurance they must also obtain an attorney's certification, thus incurring unnecessary expense without providing any substantial additional protection. FCA reconsidered this requirement, and published a proposed rule on October 12, 1993 (58 FR 52701) to amend the regulation to permit institutions to obtain title insurance instead of an attorney's certificate to document the existence of a first lien, provided that the title insurance policy meets certain standards.

The FCA recognizes that practices within the mortgage lending industry continually change and is amending § 615.5060 to give FCS institutions additional flexibility while maintaining protection for them as well as for FCS investors and borrower-stockholders. The revised regulation allows FCS institutions to determine which method for validating first lien position (an attorney's certification or title insurance) provides them the best protection for the amount expended.

II. Synopsis of Comments

The comment period for the proposed amendments to § 615.5060 closed November 12, 1993. FCA received four comment letters during the public comment period from: The Farm Credit Council (FCC), a Farm Credit Bank (FCB), an agricultural credit association (ACA), and a Texas law firm. In addition, an FCB and a Federal land credit association (FLCA) commented on this regulation as part of their responses to the FCA Board's Statement on Regulatory Burden, which appeared in the **Federal Register** on June 23, 1993 (58 FR 34003), seeking public comment on the appropriateness of regulatory requirements imposed on the FCS.

All commenters strongly supported the amendments to the proposed regulation. In general, commenters believe that the revision would provide additional flexibility and allow FCS institutions to evaluate present practices and determine the best course of action. Further, commenters indicated that since many FCS institutions already require title insurance on real estate loans the proposed regulation would greatly simplify the closing process and reduce costs. One commenter stated that the FCA's existing requirement for long-term real estate loans is both antiquated and unduly burdensome, and it therefore fully endorsed the intent of FCA's proposed regulations.

In addition to general comments, the FCC and the ACA offered technical suggestions that they believe would

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terms of that loan for at least the preceding year. The new loan must meet all of the other eligibility criteria in order to qualify for a 50 percent risk weight.

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

improve or clarify the regulation. Commenters were concerned that the words "at loan closing" in proposed § 615.5060(a)(2) created some ambiguity because it is often not possible to obtain a title insurance policy at the time of loan closing. One commenter stated that a loan is closed based on a title commitment and a final title insurance policy is not issued until after loan closing when there is satisfaction of the requirements set out in the commitment. Another commenter stated that it is a common practice to obtain the actual title policy at a later date, with the policy being issued "as of" the date the lien documents are recorded. Commenters asserted that FCS institutions would be unable to take advantage of the additional flexibility and cost savings the proposed regulation is intended to provide if the institutions were required to obtain a final title insurance policy at loan closing. FCA modified proposed § 615.5060(a)(2) by deleting the requirement that the policy be obtained "at loan closing" but notes that the Act authorizes an FCB to make a long-term mortgage loan only if that loan is secured by a first lien on real estate.

The FCC and the ACA also commented that, as currently written, proposed § 615.5060(a)(2)(ii) might be construed to mean that counsel must approve not only the standard form to be used, but also the way in which the form is completed in each particular case. Paragraph (a)(2)(ii) requires only that the final title policy be issued on a standard title insurance policy form that the counsel for the lending institution has approved. The language in paragraph (a)(2)(ii) was revised to make this clearer. Further, the FCC and the ACA suggested that, because many ACAs and FLCAs do not have their own in-house counsel, the regulation should be modified to allow counsel for either the association or the "supervising" bank to approve the standard form. The phrase "counsel for the lending institution" in § 615.5060 (a)(2)(ii) and (a)(2)(iv) is not meant to require that an association have in-house counsel. An association may, if it wishes, rely on counsel for the affiliated bank or the association's retained counsel if counsel agrees to act for the association in approving the form of the title insurance policy and prescribing these standards.

Proposed § 615.5060(a)(2)(iii) requires that the title insurance policy be issued "for an amount equal to the balance outstanding on the real estate mortgage loan." Commenters stated that multiple tracts of real estate are frequently offered as security for a loan and in some situations separate title insurance policies for various tracts are obtained from different insurers. The FCC further stated that title insurance companies often require that the insured amount be allocated among the various policies, and often refuse to issue a policy in an amount in excess of the value of the particular tract they are insuring. The FCC further stated that the amount of the title insurance that should be required should be directly related to the value of the lender's interest in the property that is being insured. Therefore, the FCC suggested that § 615.5060(a)(2)(iii) be revised to require that the final policy be issued for an amount equal to the balance outstanding on the real estate mortgage loan "or such lesser amount as is sufficient to protect the interest of the lending institution in the insured property." The FCC believes that such language would enable the lending institution to determine whether the title policy should be issued for the full amount of the loan or, when multiple tracts are taken as security, for the market or appraised value of the property being insured, whether that value is greater than or less than the amount of the loan.

The FCA Board conceptually agrees with the commenters that the title insurance should be issued for an amount that is sufficient to protect the interest of the lending institution. However, the FCA Board believes that the amount of title insurance necessary to protect the lender on a long-term real estate mortgage loan is no less than the outstanding loan balance. The Act and FCA regulations limit long-term real estate loans to a percentage of the appraised value of the real estate security. FCA's regulation does not require that an institution obtain title insurance for an amount that is in excess of the value of the real estate security, but rather requires coverage in an amount at least equal to the outstanding loan balance, an amount less than the value of the real estate security. In the case of multiple tracts, if a separate policy is issued for a tract, the minimum amount insured by that policy shall bear the same ratio to the outstanding balance that the appraised value of the tract bears to the appraised value of all the real estate security. Accordingly, the final rule requires that if only title insurance is used to document the existence of a first lien, the final title policy or policies must be issued for an amount at least equal to the outstanding loan balance.

Commenters also indicated that in loans with multiple tracts, title to some tracts may be evidenced by abstracts while other tracts are covered by title insurance. This comment indirectly raises the issue of whether the regulation permits the lender to decide, for each tract, whether to use an attorney lien certification or title insurance to document the existence of a first lien when more than one tract is involved in a single first mortgage loan. The regulation should not be read to preclude the use of different methods of lien documentation for different tracts. In the case of multiple tracts, if title insurance is relied upon for some tracts and attorney certifications are used for others, the minimum amount insured by a policy for a particular tract shall bear the same ratio to the outstanding balance that the appraised value of the tract bears to the appraised value of all the real estate security. For example, suppose a loan for $80,000 is secured by two properties with appraised values of $70,000 and $30,000. Insurance policies for the properties should be obtained in amounts of at least $56,000 and $24,000, respectively. If an attorney lien certification is used for the first property, then title insurance for the second property need only be obtained for $24,000—not the $80,000 loan amount.

Proposed paragraph (a)(2)(iv) requires that personnel with adequate training and experience in real estate title matters, designated by counsel, certify in writing that they reviewed the final policy and that the final policy insures a first lien or its equivalent on the primary real estate security for the loan. Commenters believe that it should suffice that a person performing this function meet certain standards of training and experience that are prescribed by the counsel for the lender, but that there should be no specific requirement that counsel actually designate the individual who performs this function. The FCA agrees with the commenters' observations and has modified paragraph (a)(2)(iv) to require that a person performing this function meet written standards for training and experience prescribed by the counsel for the lender, and to eliminate any implication that counsel actually has to designate the individual who performs this function.

Finally, the first sentence of § 615.5060(a) is revised to make it less awkward. The meaning of the sentence is not changed.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1 12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4 9, 4.14B, 4.25, 5.9, 5.17, 6 20, 6 26, 8 0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart B—Collateral

2. Section 615.5060 is amended by revising paragraph (a) to read as follows:

§ 615.5060 Special collateral requirements.

(a) An attorney lien certification need not be obtained at the time a note is accepted as collateral if the counsel for the bank or association has determined, in writing, that the bank or association procedures provide sufficient safeguards to ensure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien or its equivalent on the borrower's interest in the primary real estate security. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of the loan closing, unless, before the end of such period:

(1) An attorney has certified that the bank or association has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan; or

(2) The bank or association has obtained a title insurance policy insuring that it has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan, and all of the following requirements are satisfied:

(i) The final policy was issued by a title insurance company that has been licensed to issue such policies by the appropriate state insurance regulatory body or bodies, has not been barred or suspended, and has been approved by the lending institution;

(ii) The standard form on which the final policy was issued has been approved by the counsel for the lending institution;

(iii) The final policy was issued for an amount at least equal to the balance outstanding on the real estate mortgage loan or, if separate policies are issued to insure separate tracts, the minimum amount insured by each policy shall bear the same ratio to the outstanding balance of the loan that the appraised value of the tract insured by that policy bears to the appraised value of all the real estate security for the loan; and

(iv) Personnel meeting written standards of training and experience in real estate title matters prescribed by the counsel for the lending institution certified in writing that:

(A) They reviewed the final policy and that the policy complies with standards prescribed by such counsel; and

(B) The final policy insures that a first lien or its equivalent from a security standpoint has been obtained on the primary real estate security for the loan.

* * * * *

Dated: January 13, 1994

Curtis M. Anderson,

Secretary, Farm Credit Administration Board

[FR Doc. 94–1763 Filed 1–26–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–21; Amendment 39–8804; AD 94–02–06]

Airworthiness Directives; Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series engines, that currently requires removal from service of certain modified pistons, inspection of the propeller to engine propeller-flange attachment bolts, inspection of the engine propeller-flange retaining nut, and inspection of the rear crankshaft counterweight system. This amendment removes the repetitive inspection requirements of the existing AD, but retains the requirement to remove from service certain modified pistons. This amendment is prompted by test results that have indicated that PZL–3S Second Series engines not configured with modified pistons are not susceptible to excessive vibration. The actions specified by this AD are intended to prevent separation of the propeller and loss of the aircraft.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–18–12, Amendment 39–8120 (57 FR 5378, February 14, 1992), which is applicable to Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series engines, was published in the **Federal Register** on January 5, 1993 (58 FR 278). That action proposed to remove the repetitive inspection requirements of the existing AD, but retain the requirements for removal from service of certain pistons that have been modified and assembled with certain compression ring, scraper ring, and oil control ring components.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 11 PZL–3S Second Series engines of the affected design in the worldwide fleet. The FAA estimates that 3 engines of the affected design are installed on aircraft of U.S. registry, that it will take approximately 5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $825.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8120 (57 FR 5378, February 14, 1992) and by adding a new airworthiness directive, Amendment 39–8804, to read as follows:

94–02–06 Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW":

Amendment 39–8804 Docket 92–ANE–21. Supersedes AD 91–18–12, Amendment 39–8120.

Applicability: Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series reciprocating engines installed on but not limited to Grumman AG CAT aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the propeller and loss of the aircraft, accomplish the following:

(a) For pistons that have been modified and assembled with compression ring, part number (P/N) JRS 123421, scraper ring, P/N JRS 123423, and oil control ring, P/N JRS 123424, prior to further flight

(1) Remove these pistons from service and replace with serviceable parts.

(2) Remove, clean, and visually inspect using 10x magnification the propeller to engine propeller-flange attachment bolts for evidence of cracking or failure, and perform the following:

(i) For engines with bolts found to be cracked or broken, replace with new bolts and disassemble and visually inspect for distress of the rear crankshaft, rear counterweight, and rear counterweight pins.

(A) If any distress is found in the rear crankshaft, rear counterweight, or rear counterweight pins, replace distressed parts with new parts.

(B) Distress is defined as any evidence of wear, galling, pitting, or scoring, and includes discoloration (blue color) of the counterweight pins.

(ii) For engines with bolts found not to be cracked, inspect the engine propeller-flange retaining nut for looseness and perform the following:

(A) Retorque the propeller-flange retaining nut if found loose in accordance with Section 3.3.4 of the PZL–3S Engine Servicing Instructions, revised March 1984.

(B) Replace all propeller to engine propeller-flange attachment bolts with new bolts.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office

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

(d) This amendment becomes effective on February 28, 1994 Issued in Burlington, Massachusetts, on January 12, 1994

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 94–1687 Filed 1–26–94, 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASO–10]

Designation of Class E Airspace, Adel, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Adel, Georgia. A VHF Omni-Directional Range/Distance Measuring Equipment (VOR/DME–A) Standard Instrument Approach Procedure (SIAP) for the Cook County Airport has been developed and controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

History

On August 25, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Adel, Georgia, to accommodate a VOR/DME–A instrument approach procedure to the Cook County Airport, Adel, Georgia (58 FR 47411). The proposal was to add controlled airspace extending upward from 700 feet above the surface to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the en route and terminal environments, and to change the operating status of the airport from visual flight rules (VFR) operations to include IFR operations concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet above the surface. The coordinates for this airspace docket are based on North American Datum 83 Designation for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Adel, Georgia, to accommodate a VOR/DME–A SIAP based on the Moultrie VOR to the Cook County Airport Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

In addition, the operating status of the Cook County Airport is changed from VFR operations to include IFR operations concurrent with the publication of the SIAP.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO GA E5 Adel, Georgia, [New]

Cook County Airport, GA
(lat. 31°08′26″N., long. 83°27′11″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Cook County Airport.

* * * * *

Issued in College Park, Georgia, on January 11, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–1645 Filed 1-26–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27580; Amdt. No. 1581]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria

were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Navigation (Air), Weather.

Issued in Washington, DC on January 14, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 U.T.C. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME, § 97.29 ILS, ISL/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 28, 1994*

Sitka, AK, Sitka, VOR–A, Amdt. 7, CANCELLED
Sitka, AK, Sitka, VOR–C, Orig.
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR–A, Amdt. 4
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR RWY 11, Amdt. 4
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR–B, Amdt. 1

** * * Effective March 3, 1994*

Palm Springs, CA, Thermal, VOR–A, Orig.
Palm Springs, CA, Thermal, VOR/DME RWY 30, Orig.
Thermal, CA, Thermal, VOR–A, Amdt. 3, CANCELLED
Thermal, CA, Thermal, VOR/DME RWY 30, Amdt. 3, CANCELLED
Sioux City, IA, Sioux Gateway, RNAV RWY 17, Amdt. 3A, CANCELLED
Sioux City, IA, Sioux Gateway, RNAV RWY 35, Amdt. 6A, CANCELLED
Mount Sterling, KY, Mt. Sterling-Montgomery County, VOR–A, Orig., CANCELLED
Mount Sterling, KY, Mt. Sterling-Montgomery County, VOR/DME–B, Orig., CANCELLED
Caldwell, NJ, Essex County, NDB RWY 22, Amdt. 5
Teterboro, NJ, Teterboro, VOR/DME 1 RWY 24, Amdt. 6
Teterboro, NJ, Teterboro, VOR/DME 2 RWY 24, Amdt. 1
Vineland, NJ, Kroelinger, VOR RWY 28, Amdt. 7, CANCELLED
Vineland, NJ, Kroelinger, VOR–B, Orig.
East Liverpool, OH, Columbiana County, NDB RWY 25, Amdt. 6, CANCELLED
East Liverpool, OH, Columbiana County, VOR RWY 25, Amdt. 3
Newark, OH, Newark-Heath, VOR–A, Amdt. 12
Newark, OH, Newark-Heath, SDF RWY 9, Amdt. 5
Newark, OH, Newark-Heath, NDB RWY 9, Amdt. 6
Newark, OH, Newark-Heath, VOR/DME RNAV RWY 27, Amdt. 6
ADA, OK, ADA Muni, VOR/DME RWY 17 Amdt. 1
ADA, OK, ADA Muni, NDB–A, Amdt. 3
Ardmore, OK, Ardmore Muni, VOR RWY 4, Amdt. 19
Ardmore, OK, Ardmore Muni, NDB RWY 30 Amdt. 4
Ardmore, OK, Ardmore Muni, ILS RWY 30, Amdt. 2
Ardmore, OK, Ardmore Downtown Executive, VOR–A, Amdt. 13
Ardmore, OK, Ardmore Downtown Executive, NDB RWY 35, Amdt. 5
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV RWY 17, Amdt. 6
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV RWY 35, Amdt. 5
Duncan, OK, Halliburton Field, VOR RWY 35, Amdt. 10
Duncan, OK, Halliburton Field, LOC RWY 35, Amdt. 4
Durant, OK, Eaker Field, NDB RWY 35, Amdt. 5
Madill, OK, Madill Muni, VOR/DME–A, Amdt. 3
West Chester, PA, Brandywine, VOR–A, Amdt. 2
West Chester, PA, Brandywine, VOR/DME RNAV RWY 27, Amdt. 2
Bonham, TX, Jones Field, VOR/DME RWY 17, Amdt. 2
Bonham, TX, Jones Field, NDB RWY 17, Amdt. 2
Watertown, WI, Watertown Muni, VOR/DME RWY 29, Orig.
Watertown, WI, Watertown Muni, NDB RWY 5, Amdt. 1
Watertown, WI, Watertown Muni, NDB RWY 23, Amdt. 1
Watertown, WI, Watertown Muni, VOR/DME RNAV RWY 5, Amdt. 3

** * * Effective February 3, 1994*

Keene, NH, Dillant-Hopkins, ILS RWY 2, Amdt. 1

** * * Effective January 10, 1994*

Gulfport, MS, Gulfport-Biloxi RGNL, VOR RWY 14, Amdt. 21
Gulfport, MS, Gulfport-Biloxi RGNL, VOR/DME or TACAN RWY 14, Amdt. 2
Gulfport, MS, Gulfport-Biloxi RGNL, VOR RWY 32, Amdt. 20
Gulfport, MS, Gulfport-Biloxi RGNL, VOR/DME or TACAN RWY 32, Amdt. 2
Gulfport, MS, Gulfport-Biloxi RGNL, NDB RWY 14, Amdt. 11
Gulfport, MS, Gulfport-Biloxi RGNL, ILS RWY 14, Amdt. 13
Gulfport, MS, Gulfport-Biloxi RGNL, ILS RWY 32, Amdt. 3
Gulfport, MS, Gulfport-Biloxi RGNL, RADAR–1, Amdt. 5

** * * Effective January 5, 1994*

Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Amdt. 1

[FR Doc. 94–1724 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27582; Amdt. No. 1582]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air), Weather.

Issued in Washington, DC on January 14, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS,

ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 28, 1994*

Sitka, AK, Sitka, VOR–A, Amdt. 7, CANCELLED
Sitka, KA, Sitka, VOR–C, Orig.
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR–A, Amdt. 4
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR RWY 11, Admt. 4
Atlantic City, NJ, Atlantic City Muni/Bader Field, VOR–B, Admt. 1

** * * Effective March 3, 1994*

Palm Springs, CA, Thermal, VOR–A, Orig.
Palm Springs, CA, Thermal, VOR/DME RWY 30, Orig.
Thermal, CA, Thermal, VOR–A, Amdt. 3, CANCELLED
Thermal, CA, Thermal, VOR/DME RWY 30, Amdt. 3, CANCELLED
Sioux City, IA, Sioux Gateway, RNAV RWY 17, Amdt. 3A, CANCELLED
Sioux City, IA, Sioux Gateway, RNAV RWY 35, Amdt. 6A, CANCELLED
Mount Sterling, KY, MT. Sterling-Montgomery County, VOR–A, Orig., CANCELLED
Mount Sterling, KY, MT. Sterling-Montgomery County, VOR/DME–B, Orig. CANCELLED
Caldwell, NJ, Essex County, NDB RWY 22, Amdt. 5
Teterboro, NJ, Teterboro, VOR/DME 1 RWY 24, Amdt. 6
Teterboro, NJ, Teterboro, VOR/DME 2 RWY 24, Amdt. 1
Vineland, NJ, Kroelinger, VOR RWY 28, Amdt. 7, CANCELLED
Vineland, NJ, Kroelinger, VOR–B, Orig.
East Liverpool, OH, Columbiana County, NDB RWY 25, Amdt. 6, CANCELLED
East Liverpool, OH, Columbiana County, VOR RWY 25, Amdt. 3
Newark, OH, Newark-Heath, VOR–A, Amdt. 12
Newark, OH, Newark-Heath, SDF RWY 9, Amdt. 5
Newark, OH, Newark-Heath, NDB RWY 9, Amdt. 6
Newark, OH, Newark-Heath, VOR/DME RNAV RWY 27, Amdt. 6
ADA, OK, ADA Muni, VOR/DME RWY 17, Amdt. 1
ADA, OK, ADA Muni, NDB–A, Amdt. 3
Ardmore, OK, Ardmore Muni, VOR RWY 4, Amdt. 19
Ardmore, OK, Ardmore Muni, NDB RWY 30, Amdt. 4
Ardmore, OK, Ardmore Muni, ILS RWY 30, Amdt. 2
Ardmore, OK, Ardmore Downtown Executive, VOR–A, Amdt. 13
Ardmore, OK, Ardmore Downtown Executive, NDB RWY 35, Amdt. 5
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV RWY 17, Amdt. 6
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV RWY 35, Amdt. 5
Duncan, OK, Halliburton Field, VOR RWY 35, Amdt. 10
Duncan, OK, Halliburton Field, LOC RWY 35, Amdt. 4
Durant, OK, Eaker Field, NDB RWY 35, Amdt. 5
Madill, OK, Madill Muni, VOR/DME–A, Amdt. 3
West Chester, PA, Brandywine, VOR–A, Amdt. 2
West Chester PA, Brandywine, VOR/DME RNAV RWY 27, Amdt. 2
Bonham, TX, Jones Field, VOR/DME RWY 17, Amdt. 2
Bonham, TX, Jones Field, NDB RWY 17, Amdt. 2
Watertown, WI, Watertown Muni, VOR/DME RWY 29, Orig.
Watertown, WI, Watertown Muni, NDB RWY 5, Amdt. 1
Watertown, WI, Watertown Muni, NDB RWY 23, Amdt. 1
Watertown, WI, Watertown Muni, VOR/DME RNAV RWY 5, Amdt. 3

** * * Effective February 3, 1994*

Keene, NH, Dillant-Hopkins, ILS RWY 2, Amdt. 1

** * * Effective January 10, 1994*

Gulfport, MS, Gulfport-Biloxi RGNL, VOR RWY 14, Amdt. 21
Gulfport, MS, Gulfport-Biloxi RGNL, VOR/DME or TACAN RWY 14, Amdt. 2
Gulfport, MS, Gulfport-Biloxi RGNL, VOR RWY 32, Amdt. 20
Gulfport, MS, Gulfport-Biloxi RGNL, VOR/DME or TACAN RWY 32, Amdt. 2
Gulfport, MS, Gulfport-Biloxi RGNL, NDB RWY 14, Amdt. 11
Gulfport, MS, Gulfport-Biloxi RGNL, ILS RWY 14, Amdt. 13
Gulfport, MS, Gulfport-Biloxi RGNL, ILS RWY 32, Amdt. 3
Gulfport, MS, Gulfport-Biloxi RGNL, RADAR–1, Amdt. 5

** * * Effective January 5, 1994*

Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Amdt. 1

[FR Doc. 94–1725 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4829–8]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revisions consist of the provisions contained in rules promulgated between July 1, 1990, and June 30, 1991, otherwise known as RCRA Cluster I. These requirements are listed in Section B of this document. The Environmental Protection Agency (EPA) has reviewed North Carolina's application(s) and has made a decision, subject to public review and comment, that the North Carolina hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's applications for program revisions are available for public review and comment.

DATES: Final authorization for North Carolina's program revisions shall be effective March 28, 1994, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on North Carolina's program revision applications must be received by the close of business, February 28, 1994.

ADDRESSES: Copies of North Carolina's program revision applications are available during normal business hours at the following addresses for inspection and copying: North Carolina Department of Environment, Health, and Natural Resources, Hazardous Waste Branch, P.O. Box 27687, Raleigh, North Carolina 27611–7687; U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the

HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. North Carolina

North Carolina initially received final authorization for its base RCRA program effective on December 31, 1984, (49 FR 48694). North Carolina most recently received final authorization effective February 16, 1993, for Non-HSWA Cluster VI and HSWA Cluster II (54 FR 59825, December 16, 1992). On September 21, 1992, North Carolina submitted program revision application for additional program approvals. On October 20, 1993, North Carolina submitted an addendium to the September 21, 1992, program revision application. Today, North Carolina is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed North Carolina's applications and has made an immediate final decision that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until February 28, 1994.

Copies of North Carolina's application(s) for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of North Carolina's program revisions shall become effective March 28, 1994, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

North Carolina is today seeking authority to administer the following federal requirements promulgated between July 1, 1990, and June 30, 1991, for the requirements of RCRA Cluster I except for the February 21, 1991, (56 FR 7134)

BURNING OF HAZARDOUS WASTE IN BOILERS AND INDUSTRIAL FURNACES RULE (CHECKLIST 85)

Federal requirement	HSWA or FR reference	Federal promulgation date	State authority
CHECKLIST 80	55 FR 40834	10/5/90	15 NCAC 13A .0006(a).
Toxicity Characteristics Hydrocarbon Recovery Operations (HSWA)	56 FR 3798	2/1/91	
	56 FR 13406	4/2/91	
CHECKLIST 81	55 FR 46354	11/2/90	15A NCAC 13A .0006(d).
Petroleum Refinery and Secondary Oil/Water/Solid Separation Sludge Listings (F037 and F038)	55 FR 51707	12/17/90	15A NCAC 13A .0006(e).
CHECKLIST 82	55 FR 50450	12/6/90	15A NCAC 13A .0002(b).
Wood Preserving Listings			15A NCAC 13A .0006(a).
			15A NCAC 13A .0006(d).
			15A NCAC 13A .0006(e).
			15A NCAC 13A .0007(c).
			15A NCAC 13A .0009(k).
			15A NCAC 13A .0009(s).
			15A NCAC 13A .0010(j).
			15A NCAC 13A .0010(r).
			15A NCAC 13A .0013(b).
CHECKLIST 83	56 FR 3864	1/31/91	15A NCAC 13A .0006(a).
Land Disposal Restrictions for Third Scheduled Waste; Technical Amendments			15A NCAC 13A .0006(c).
			15A NCAC 13A .0006(d).
			15A NCAC 13A .0007(a).
			15A NCAC 13A .0007(c).
			15A NCAC 13A .0012(a).
			15A NCAC 13A .0012(b).
			15A NCAC 13A .0012(c).
			15A NCAC 13A .0012(e).
			15A NCAC 13A .0013(g).
CHECKLIST 84	56 FR 5910	2/13/91	15A NCAC 13A .0006(a).
Toxicity Characteristic; Chloroflourocarbon Refrigerants			
CHECKLIST 86	56 FR 7567	2/25/91	15A NCAC 13A .0006(d).
Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment			15A NCAC 13A .0006(e).

BURNING OF HAZARDOUS WASTE IN BOILERS AND INDUSTRIAL FURNACES RULE (CHECKLIST 85)—Continued

Federal requirement	HSWA or FR reference	Federal promulgation date	State authority
CHECKLIST 87	56 FR 19290	4/26/91	15A NCAC 13A .0009(u).
Organic Air Emission Standards for Process Vents Equipment Leaks; Technical Amendment			15A NCAC 13A .0009(v).
			15A NCAC 13A .0010(b).
			15A NCAC 13A .0010(c).
			15A NCAC 13A .0010(e).
			15A NCAC 13A .0010(s).
			15A NCAC 13A .0010(t).
			15A NCAC 13A .0013(b).
CHECKLIST 88	56 FR 19951	5/1/91	15A NCAC 13A .0006(d).
Administrative Stay for K069			
CHECKLIST 89	56 FR 21955	5/13/91	15A NCAC 13A .0006(d).
Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)			
CHECKLIST 90	56 FR 27300	6/13/91	15A NCAC 13A .0006(a).
Mining Waste Exclusion III			
CHECKLIST 91	56 FR 27332	6/13/91	15A NCAC 13A .0006(d).
Wood Preserving Listings Administrative Stay for F032, F034, and F035 listings	57 FR 5861	2/18/92	15A NCAC 13A .0009(s).
			15A NCAC 13A .0010(r).
Burning and Blending of	§3004(q)(2)(A)		NCGS 130A–21.6.
Hazardous Waste	§3004(r)(2)&(3)		NCGS 130A–294(c)(1).
			NCGS 130A–294(c)(15).
Surface Impoundments in Existence on November 8, 1984	§3005(j)(1)&(6)		NCGS 130A–294(c)(7).
			NCGS 130A–294(c)(11).
			NCGS 130A–294(c)(15).
			NCGS 130A–294(b)(7).
			NCGS 150B–21.6.

C. Decision

I conclude that North Carolina's application(s) for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised.

North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–1734 Filed 1–26–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

[DA 94–3]

Commercial Operator License Examinations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order clarifies that the Commission rather than COLE managers will grant examination credit when appropriate and that applicants who desire examination credit must submit documentation supporting their request. This action was needed to clarify the rules. It will eliminate procedures that are unnecessary and duplicative of functions performed by the Commission license processing staff.

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: William Cross, Federal Communications Commission, Washington, DC 20554 (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 3, 1994.
Released: January 11, 1994.

By the Chief, Private Radio Bureau:

1. Section 13.205 of the Commission's Rules, 47 CFR 13.205, currently

provides that a commercial operator license examination (COLE) manager must give examination credit to an examinee holding certain documents.[1] This procedure is unnecessary and duplicative of a function performed by the Commission license processing staff. We are amending § 13.205, therefore, to clarify that the Commission rather than the COLE manager will grant examination credit when appropriate, and §§ 13.9(c) and 13.13(c) of the Commission's Rules, 47 CFR 13.9(c) and 13.13(c), to clarify that applicants who desire examination credit must submit documentation supporting their request.

2. We also are moving the showing required of an applicant to qualify for a radiotelegraph Six Months Service Endorsement from § 13.201(c) of the Commission's Rules, 47 CFR 13.201(c), to § 13.9(d) of the Commission's Rules, 47 CFR 13.9(d). This change is intended to clarify that qualification for the Six Month Service Endorsement is determined directly by the Commission rather than the COLE Manager.

3. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, therefore, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

4. Accordingly, part 13 is amended, effective February 24, 1994, as set forth below.

List of Subjects in 47 CFR Part 13

Radio.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Rule Changes

Part 13 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

[1] These documents are an unexpired (or within the grace period) FCC-issued commercial radio operator license, an FCC-issued Amateur Extra Class operator license, and a Proof of Passing Certificate issued within the past 365 days. The purpose of granting examination element credit is to recognize that an examinee previously has passed an examination that covers the same material and, therefore, does not need to demonstrate again his or her knowledge of this material.

PART 13—COMMERCIAL RADIO OPERATORS

1. The authority citation for part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Sections 13.9 (c) and (d) are revised to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(c) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Ship Radar Endorsement, GMDSS Radio Operator's License or GMDSS Radio Maintainer's License must be accompanied by the required fee, if any, and submitted to the address specified in part 1 of the rules. The application must include:

(1) An original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examination element(s) within the previous 365 days, and

(2) A copy of the applicable license(s) when the applicant claims credit for an examination element. The FCC will give credit only as specified below to an applicant holding any of the following documents:

(i) An unexpired (or within the grace period) FCC-issued commercial radio operator license: The written examination and telegraphy Element(s) required to obtain the license held.

(ii) An unexpired (or within the grace period) FCC-issued Amateur Extra Class operator license: Telegraphy Elements 1 and 2.

(d) Each application for a new Six Months Service Endorsement must be submitted to the address specified in Part 1 of the rules. The application must include documentation showing that:

(1) The applicant was employed as a radio operator on board a ship or ships of the United States for a period totaling at least six months;

(2) The ships were equipped with a radio station complying with the provisions of part II of title III of the Communications Act, or the ships were owned and operated by the U.S. Government and equipped with radio stations;

(3) The ships were in service during the applicable six month period and no portion of any single in-port period included in the qualifying six months period exceeded seven days;

(4) The applicant held a FCC-issued First or Second Class Radiotelegraph Operator's Certificate during this entire six month qualifying period; and

(5) The applicant holds a radio officer's license issued by the U.S. Coast Guard at the time the six month endorsement is requested.

* * * * *

3. Section 13.13(c) is revised to read as follows:

§ 13.13 Application for a renewed or modified license.

* * * * *

(c) Each application involving a change in operator class must be made on FCC Form 756. Each application for a commercial operator license involving a change in operator class must be accompanied by the required fee, if any, and submitted to the address specified in part 1 of the rules. The application must include:

(1) An original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examination element(s) within the previous 365 days, and

(2) A copy of the applicable license(s) when the applicant claims credit for an examination element. The FCC will give credit only as specified below to an applicant holding any of the following documents:

(i) An unexpired (or within the grace period) FCC-issued commercial radio operator license: the written examination and telegraphy Element(s) required to obtain the license held.

(ii) An unexpired (or within the grace period) FCC-issued Amateur Extra Class operator license: Telegraphy Elements 1 and 2.

* * * * *

§ 13.201 [Amended]

4. Section 13.201(c) is removed.

§ 13.205 [Removed]

5. Section 13.205 is removed.

[FR Doc. 94–1699 Filed 1–26–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 18
Thursday, January 27, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R-0815; Reg. M]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; extension of comment period.

SUMMARY: On November 19, 1993, the Board requested comment on an advance notice of proposed rulemaking concerning Regulation M (Consumer Leasing) which, among other things, solicited comment on possible amendments to the Regulation (58 FR 61035). The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period for 30 days to give the public additional time to provide comments.

DATES: Comments must be received by February 24, 1994.

ADDRESSES: Comments, which should refer to Docket No. R-0815, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Kyung Cho or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412. For the hearing impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on the advance notice of proposed rulemaking on Regulation M (Consumer Leasing), to give the public additional time to comment on the proposal.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, January 21, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-1696 Filed 1-26-94; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-94-2]

Petition for Rulemaking: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received February 4, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27532, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on January 12, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27532.

Petitioner: Air Transport Association.

Regulations Affected: 14 CFR 121.343(c).

Description of Rulechange Sought: To allow operators to complete a phased compliance schedule for installation of the 11-parameter digital flight data recorders (DFDR) on aircraft between December 31, 1994, and December 31, 1999, and eliminate the need to make costly DFDR retrofit to aircraft that will not be in the U.S. airline inventory at the end of the decade.

Petitioner's Reason for the Request: The petitioner feels that this amendment will save ATA operators alone $23,700,000; retrofit installation is not supported via an aircraft manufacturer service bulletin, since the majority of aircraft models affected by the rule are out of production; and any enhancement to the collection of flight history data may be of minimal benefit for the airplanes that are to be retired between 1994 and 1999.

[FR Doc. 94-1350 Filed 1-26-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 93–ANE–81]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede telegraphic airworthiness directive (AD) T89–05–52 by adopting a new AD, applicable to Pratt & Whitney (PW) JT8D series turbofan engines. Telegraphic AD T89–05–52 currently requires repetitive ultrasonic inspections of a combustion chamber outer case (CCOC) weld, but also allows visual inspection or fluorescent magnetic penetrant inspection (FMPI) of certain CCOC's under specified conditions. This proposal would allow ultrasonic inspections only. This proposal is prompted by the greater availability of ultrasonic inspection equipment, which provides a more definitive means of discovering cracks than either visual inspections or FMPI. The actions specified by the proposed AD are intended to prevent rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage.

DATES: Comments must be received by March 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–81, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–81." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–81, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On March 1, 1989, the Federal Aviation Administration (FAA) issued telegraphic airworthiness directive (AD) T89–05–52, applicable to Pratt & Whitney (PW) JT8D series turbofan engines, which requires repetitive ultrasonic inspections for cracks in the combustion chamber outer case (CCOC). In addition, that telegraphic AD allowed operators who did not have ultrasonic inspection capability to perform visual inspections and fluorescent magnetic penetrant inspections (FMPI) of CCOC's. That action was prompted by reports of two CCOC's, both part number (P/N) 796761, which were found in service with severe cracking and distress at the weld which joins the forward case detail to the rear flange detail. These cracks initiated from an area of incomplete weld created during the manufacturing process and were not detected during the final inspection process. Another CCOC, P/N 806675, is manufactured using a similar process and has the same potential for incomplete welds, but to date have not been found cracked. That condition, if not corrected, could result in rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage.

Since the issuance of that telegraphic AD, the FAA has received reports that most operators now have the capability to perform ultrasonic inspections, which provides a more definitive means of discovering cracks than either visual inspections or FMPI. In telegraphic AD T89–05–52, reinspection of all CCOC's is required, including reinspection of those CCOC's that exhibited minimal ultrasonic indications during initial inspection. The FAA has determined analytically that CCOC's that exhibit maximum signal amplitudes of less than 40 percent are not life limited at the defined weld area. Therefore, CCOC's that meet this signal criteria for two consecutive ultrasonic inspections may be marked with a new P/N, provided the second ultrasonic inspection is accomplished at least 2,500 cycles in service (CIS) after the first inspection and the second inspection is performed in accordance with Appendix C of PW Alert Service Bulletin (ASB) No. 5842, Revision 3, dated October 10, 1990.

Finally, the FAA has determined that certain CCOC's, P/N 806675, were ultrasonically inspected by PW during the manufacturing process, and therefore do not need to be inspected again until they are accessible in the shop.

The FAA has reviewed and approved the technical contents of PW ASB No. 5842, Revision 3, dated October 10, 1990, that describes procedures for repetitive ultrasonic inspections of CCOC's for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would supersede telegraphic AD T89–05–52 to require repetitive ultrasonic inspections of CCOC's for cracks. The proposed AD would also allow CCOC's that meet certain signal criteria for two consecutive ultrasonic inspections to be marked with a new P/N. Once remarked, those CCOC's would not need to meet the repetitive ultrasonic inspection requirements of this AD. Finally, the proposed AD would require ultrasonic inspections on certain CCOC's, P/N 806675, identified by serial number, that were ultrasonically inspected by PW during the manufacturing process, when they are accessible in the shop. The actions are required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 1,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $110,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 93–ANE–81.

Applicability: Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, with combustion chamber outer case (CCOC), Part Number (P/N) 796761 or 806675. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage, accomplish the following:

(a) Except for CCOC's cited in paragraph (c) of this airworthiness directive (AD), ultrasonically inspect CCOC's installed in engines for cracks within 10 days or 75 cycles in service (CIS) after the effective date of this AD, whichever occurs later, in accordance with paragraph 2.A.(3) and Appendix B of PW Alert Service Bulletin (ASB) No. 5842, Revision 3, dated October 10, 1990.

(b) For CCOC's not installed in engines and not cited in paragraph (c) of this AD, ultrasonically inspect CCOC's for cracks prior to returning the CCOC's to service in accordance with paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990.

(c) For CCOC's, P/N 806675, listed by serial number in Table 1 and paragraph 2.A.(10) of PW ASB No. 5842, Revision 3, dated October 10, 1990, accomplish the following:

(1) At the next removal of the CCOC from the engine after the effective date of this AD, ultrasonically inspect CCOC's for cracks in accordance with paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990.

(2) Remove from service or reinspect CCOC's in accordance with paragraphs (d) and (e), respectively, of this AD.

(3) Mark CCOC's with new part numbers in accordance with paragraphs 2.A.(5)(c) and 2.A.(11) of PW ASB No. 5842, Revision 3, dated October 10, 1990, that:

(i) Have accumulated at least 2,500 CIS since new; and

(ii) Exhibit a maximum ultrasonic signal amplitude of less than 40% during the inspection conducted subsequent to 2,500 CIS since new.

(d) Remove from service and replace with a serviceable part CCOC's with maximum ultrasonic signal amplitude determined as follows:

(1) CCOC's with greater than or equal to 360%, prior to further flight, with no ferry flight permitted in accordance with paragraph (i) of this AD below.

(2) CCOC's with less than 360%, but greater than or equal to 240%, prior to further flight, with ferry flight permitted, in accordance with paragraph (i) of this AD below.

(e) Thereafter, ultrasonically inspect CCOC's, P/N's 796761 and 806675, for cracks at intervals determined by maximum ultrasonic signal amplitude, in accordance with paragraph 2.A. and Appendix B of PW ASB No. 5842, Revision 3, dated October 10, 1990, for installed CCOC's; or paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990, for uninstalled CCOC's; as applicable, as follows:

(1) For those CCOC's that meet the criteria described in paragraph (d) of this AD, remove from service and replace with a serviceable part.

(2) For those CCOC's with less than 240%, but greater than or equal to 100%, at intervals of 1,000 CIS since last inspection.

(3) For those CCOC's with less than 100%, but greater than or equal to 40%, at intervals of 2,500 CIS since last inspection.

(4) For those CCOC's with less than 40%, inspect at the next removal of the CCOC from the engine since last inspection.

(f) Mark CCOC's with new P/N's, in accordance with paragraphs 2.A.(5)(c) and 2.A.(11) of PW ASB No. 5842, Revision 3, dated October 10, 1990, that meet the following criteria:

(1) At least two consecutive ultrasonic inspections have been performed on the CCOC; and

(2) the second inspection was performed in accordance with paragraph (b) of this AD; and

(3) have accumulated at least 2,500 CIS since the first ultrasonic inspection; and

(4) that exhibit a maximum ultrasonic signal amplitude of less than 40% in both inspections.

(g) Remarking of CCOC's with a new P/N in accordance with paragraph (f) of this AD constitutes terminating action to the inspection requirements of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Except for aircraft with engines having CCOC's that must be removed from service in accordance with paragraph (d)(1) of this AD, special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 20, 1994.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–1762 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–167–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes. This proposal would require that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the specified wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by the proposed AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

DATES: Comments must be received by March 23, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–167–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1988, a McDonnell Douglas Model DC–10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of allowable wear limits for all brakes installed on transport category airplanes. The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. The guidelines for validating brake wear limits allow credit for use of reverse thrust with a critical engine inoperative to determine the energy level absorbed by the brake during the dynamometer test.

The FAA has requested that airframe manufacturers of transport category airplanes: (1) Determine required adjustments in allowable wear limits for all of its brakes in use; (2) schedule dynamometer testing to validate wear limits as necessary; and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

British Aerospace has conducted worn brake rejected takeoff (RTO) dynamometer testing and analyses on various brakes installed on Model BAC 1–11–200 and –400 series airplanes. Based on the results of that testing and analyses, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manual for Model BAC 1–11–200 series airplanes equipped with brakes manufactured by Allied Signal Aerospace Company (Bendix) are acceptable as they relate to the effectiveness of the brakes during a high energy RTO. The FAA also finds that the maximum brake wear limits currently recommended in the Component Maintenance Manual for Model BAC 1–11–400 series airplanes equipped with Bendix brakes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Consequently, the FAA has determined that the brake wear limits for Model BAC 1–11–200 series airplanes and the new brake wear limits for Model BAC 1–11–400 series airplanes must be incorporated into the FAA-approved maintenance inspection program.

The FAA has determined that, in order to prevent loss of brake effectiveness during a high energy RTO, the following maximum brake wear limits are necessary for Model BAC 1–11–200 and –400 series airplanes equipped with Bendix brakes:

BRITISH AEROSPACE MODEL BAC 1–11–200 AND –400 SERIES AIRPLANES EQUIPPED WITH BENDIX BRAKES

Airplane Model	Brake part No.	Maximum brake wear limit (inch/mm)
BAC 1–11–200.	2601225–1	0.75 inch (19.1 mm).
BAC 1–11–400.	2601240–1	1.0 inch (25.4 mm).

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the specified wear limits be incorporated into the FAA-

approved maintenance inspection program.

There are approximately 100 Model BAC 1–11–200 and –400 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 10 Model BAC 1–11–200 series airplanes of U.S. registry and 2 U.S. operators would be affected by this proposed AD. For these airplanes and operators, although the proposed rule would require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs relative to that requirement would be involved; such actions are currently a part of the current maintenance program. However, it is estimated that it would take approximately 1 work hour, at an average labor rate of $55 per work hour, for each operator to incorporate the requirement into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the proposed requirement to revise the FAA-approved maintenance inspection program on U.S. operators of Model BAC 1–11–200 series airplanes is estimated to be $110, or $55 per operator.

The FAA estimates that 20 Model BAC 1–11–400 series airplanes of U.S. registry and 19 U.S. operators would be affected by this proposed AD. It is estimated that it would take approximately 1 work hour, at an average labor rate of $55 per work hour, for each operator to incorporate the proposed revision of its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of that proposed requirement on U.S. operators of Model BAC 1–11–400 series airplanes is estimated to be $1,045, or $55 per operator.

Additionally, the FAA estimates that for operators of Model BAC 1–11–400 series airplanes, it would take approximately 2 work hours per airplane to shorten the wear pins for replacement brakes, and 8 work hours per airplane to change the brakes, at an average labor rate of $55 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) would be approximately $912 per airplane. Based on these figures, the total cost impact of these proposed requirements on U.S. operators of Model BAC 1–11–400 series airplanes is estimated to be $29,240, or $1,462 per airplane.

These total cost figures are based on the assumption that no operator has yet accomplished the proposed requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket 93–NM–167–AD.

Applicability: All Model BAC 1–11–200 and –400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

BRITISH AEROSPACE MODEL BAC 1–11–200 AND –400 SERIES AIRPLANES EQUIPPED WITH BENDIX BRAKES

Airplane model	Brake part No.	Maximum brake wear limit (inch/mm)
BAC 1–11–200.	2601225–1	0.75 inch (19.1 mm).
BAC 1–11–400.	2601240–1	1.0 inch (25.4 mm).

Note 1: Measuring instructions for Bendix brakes can be found in Revision 4 of the Allied Signal Component Maintenance Manual.

Note 2: Revision 4 of the Allied Signal Component Maintenance Manual specifies a brake wear limit of 1.06 inch for brake part number 2601240–1. That brake wear limit is superseded by the brake wear limit of 1.0 inch specified above for that brake part number. Revision 5 of the Allied Signal Component Maintenance Manual will reflect the revised brake wear limit of 1.0 inch. Brake units having wear indicators set at 1.06 inch will be considered to be fully worn when either wear indicator pin is 1.0 inch or less above the surface of the carrier, provided the wear pin has not been shortened on that brake unit.

Note 3: Each operator should provide a method of identifying modified brakes until Revision 5 of the Allied Signal Component Maintenance Manual has been issued. Revision 5 of the manual will define a method of brake identification and reflect the brake wear limits specified above. A paint scheme similar to that used to differentiate between new and refurbished brakes could be used, for example, if a different color is used.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on January 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-1690 Filed 1-26-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 71

[Airspace Docket No. 93-AWP-25]

Proposed Establishment of Class E Airspace; Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Bullhead City, AZ. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed for the Bullhead Laughlin Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Bullhead Laughlin Municipal Airport.

DATES: Comments must be received on or before March 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 93-AWP-25, 15000 Aviation Boulevard, Lawndale, California 90261. The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-1658.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AWP-25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Bullhead City, AZ. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR/DME approach at Bullhead Laughlin, AZ. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E. O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Bullhead City, AZ [New]

Bullhead Laughlin Municipal Airport, AZ
(lat. 35°08'26" N, long. 114°33'35" W)

The airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 34°57'00" N., long. 114°33'00" W.; to lat. 35°28'00" N., long. 114°39'00" W.; to lat. 35°29'00" N., long. 114°28'00" W.; to lat. 34°57'30" N., long. 114°26'30" W.; to the point of beginning.

* * * * *

Issued in Los Angeles, California, on January 5, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–1723 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AWP–14]

Proposed Establishment of Class E Airspace; Payson, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Payson, AZ. A NonDirectional Beacon (NDB) standard instrument approach procedure (SIAP) has been developed for the Payson Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Payson Municipal Airport.

DATES: Comments must be received on or before March 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 93–AWP–14, 15000 Aviation Boulevard, Lawndale, California 90261. The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–1658.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Payson, AZ. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB–A approach at Payson, AZ. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Payson, AZ [New]

Bullhead Laughlin Airport, AZ

(lat. 34°15′24″ N, long. 111°20′22″ W)
Payson NDB
(lat. 34°15′18″ N, long. 111°20′31″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Payson Municipal Airport and within 6 miles each side of the Payson NDB 170° (T) bearing extending from the 6-mile radius to 16 miles south of the Payson NDB.

* * * * *

Issued in Los Angeles, California, on January 5, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–1722 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 290

[Docket No. 931239–3339]

Regional Centers for the Transfer of Manufacturing Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The National Institute of Standards and Technology requests comments on the proposed amendments contained in this document to the regulations found at part 290 of title 15 of the Code of Federal Regulations, which implement the Regional Centers for the Transfer of Manufacturing Technology. This change revises the matching fund requirements in the fifth and sixth years of operation to reflect program experience during the first five years. With this change, the maximum allowable Federal funding will be one third of total expenses during years five and six. Currently, the maximum allowable Federal funding is 30 percent in year five and 20 percent in year six. This change also modifies the requirements for cash match. With this change, at least half of the match must be in cash or full-time personnel loaned to the operating organization. Currently at least 55 percent of the match must be in cash or full-time personnel.

DATES: Comments on the proposed program must be received no later than February 28, 1994.

ADDRESSES: Comments on the proposed rule changes must be submitted in writing to: MTC Program Rule Comments, Technology Administration, U.S. Department of Commerce, room B115 Polymers Building, Gaithersburg, MD 20899. All comments received in response to this notice will become part of the public record and will be available for inspection and copying in the Commerce Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, room 6020, 14th Street between E Street and Constitution Avenue, NW., Washington, DC 20230

FOR FURTHER INFORMATION CONTACT: To receive additional program information, contact Philip Nanzetta at (301) 975–3414.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology requests comments regarding proposed changes to the matching funds requirements for the Regional Centers for the Transfer of Manufacturing Technology (Manufacturing Technology Centers, MTC) program found at part 290 of title 15 of the Code of Federal Regulations. The MTC program provides financial and technical assistance to regional centers (MTCs) which work directly with small and medium sized manufacturing firms to advance their level of manufacturing technology. The MTCs are selected on a competitive basis in accordance with the regulation at 15 CFR part 290.

Part of the funding for each MTC is provided by a Federal cooperative agreement and the balance (the "match") is provided through a variety of means by the operating organization. The match is generally provided as a combination of non-Federal public funds or in-kind match, contributions of cash or in-kind resources from private sources, and earned income of the MTC. The authorizing legislation allows Federal funding of up to half the total budget (cash and in-kind) in the first three years and requires that the Secretary adopt regulations which specify a declining level of Federal support during the next three years. The current regulation specifies those maximum funding levels to be 40 percent, 30 percent, and 20 percent in years four through six respectively. The changes proposed to part 290 will specify those maximum funding levels to be 40 percent, ⅓, and ⅓ in years four through six respectively.

The current regulation requires that 55 percent of the match be in cash or full-time personnel. There is no statutory requirement for this cash ratio. The changes proposed to part 290 will specify that half of the match be in cash or full-time personnel.

Classification

This document was not reviewed by the Office of Management and Budget under Executive Order 12866. The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act because the proposed rule changes will affect only those governmental units that are selected to receive funding under the Program. The program is entirely voluntary for the participants that seek funding. It is not a major federal action requiring an environmental assessment under the National Environmental Policy Act. The Regional Centers for the Transfer of Manufacturing Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 290

Science and technology, Business and industry, Small businesses.

Dated: January 19, 1994.

Raymond G. Kammer,

Deputy Director.

For reasons set forth in the preamble, it is proposed that title 15, part 290 of the Code of Federal Regulations be amended as follows:

PART 290—REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

1. The authority section for part 290 is revised to read as follows:

Authority: 15 U.S.C. 278k.

2. Section 290.4 is amended by revising Table 1 in paragraph (b) and paragraph (c)(5) to read as follows:

§ 290.4 Terms and schedule of financial assistance.

* * * * *

(b) * * *

Table 1. Schedule of NIST Matching Funds

Year of center operation	Maximum NIST share
1–3	½
4	⅖
5–6	⅓

(c) * * *

(5) In-kind contribution of part-time personnel, equipment, software, rental value of centrally located space (office and laboratory) and other related contributions up to a maximum of one-half of the host's annual share. Allowable capital expenditures may be applied in the award year expended or in subsequent award years. These restrictions on host contribution apply to all awards issued or extended after September 30, 1994.

[FR Doc. 94–1706 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT1–1–5697; AD–FRL–4830–5]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action EPA proposes approval of the state implementation plan (SIP) for the Columbia Falls, Montana nonattainment area 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 Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for Columbia Falls. EPA is also proposing approval of the Flathead County Air Pollution Control Program.

DATES: Comments on this proposed action must be received in writing by February 28, 1994.

ADDRESSES: Comments should be addressed to Meredith A. Bond, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Meredith Bond at (303) 293–1764.

SUPPLEMENTARY INFORMATION:

I. Background

The Columbia Falls, 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) and 40 CFR 81.327 (specifying designation for Columbia Falls and vicinity). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's 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 today's proposal and the supporting rationale. In today's rulemaking action on the Montana moderate PM–10 SIP, EPA is proposing to apply its interpretations considering the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM–10 nonattainment areas 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 modeling) 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 were required to 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 13510–13512, 13543–13544.

II. This Action

EPA is today proposing approval of the Columbia Falls PM–10 nonattainment area control plan. The Columbia Falls SIP consists of two submittals. The first contains the Flathead County Air Pollution Control Program and Air Pollution Plan regulations. Flathead County contains two PM_{10} nonattainment areas for which SIPs were due in November 1991: Columbia Falls and Kalispell. The Flathead County regulations apply to both areas and were submitted with the attainment demonstration for Kalispell on November 25, 1991, after being approved by the Montana Board of Health and Environmental Sciences (MBHES) on November 15, 1991. The Columbia Falls SIP and attainment demonstration were not submitted at that time since a permit necessary to the

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

control strategy for the SIP was not finalized. The MBHES issued that permit and approved the SIP on January 24, 1992. This second submittal to EPA was made by the Governor on May 6, 1992. Final technical corrections to the SIP were received by EPA on June 15, 1993. In this action, EPA is proposing to approve the Flathead County rules (with the exception of rules 501 through 506 which are specific to the city of Kalispell—EPA will take separate action on the Kalispell PM_{10} nonattainment area control plan) and the Columbia Falls PM_{10} nonattainment area control plan.

To address deficiencies identified by EPA, the State adopted commitments after public hearings on November 15, 1991 and January 24, 1992, and submitted the commitments to EPA with the Governor's May 6, 1992 letter, as additional tasks to be completed to correct the deficiencies in the Columbia Falls and statewide SIP. The State has fulfilled commitments related to SIP requirements due November 15, 1991 for the Columbia Falls nonattainment area. Those items related to deficiencies in the statewide SIP will be addressed in a separate action. EPA has determined that the Columbia Falls SIP can be fully approved without the State fulfilling the remaining commitments. Therefore, EPA is tracking the State's efforts to meet these commitments, but approval of the SIP for the Columbia Falls nonattainment area is not contingent upon the State meeting them by the specified dates (a more detailed discussion of these commitments can be found in the Technical Support Document (TSD) for this proposed action).

The State has made a separate commitment to testing and further dispersion modeling of emissions from the Columbia Falls Aluminum Company (CFAC) facility. This facility is located outside the nonattainment area and emissions from CFAC were not identified on the Chemical Mass Balance analysis of filters collected from the monitor in the Columbia Falls nonattainment area. Emissions from CFAC are a potential concern, however, since this source accounts for 20 percent of the emission inventory (at permitted allowable emissions). EPA will continue to monitor the testing and assist the State with any action required by the results.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is proposing to grant approval of those elements of the Columbia Falls PM–10 plan that were due on November 15, 1991, and submitted by the State on November 25, 1991, and May 6, 1992 (excluding the Kalispell portion of the county regulations). EPA believes that the Columbia Falls plan meets those applicable requirements of the Act.

Since the Columbia Falls PM–10 SIP was not submitted by November 15, 1991, as required by section 189(a)(2)(A) of the Act, EPA made a finding that the State failed to submit the SIP, pursuant to section 179 of the Act, and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Columbia Falls PM–10 SIP was submitted on May 6, 1992, EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated August 7, 1992. This completeness determination corrected the State's deficiency and, therefore, terminated the sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment on the implementation plan for Columbia Falls, the State of Montana held a public hearing on November 15, 1991, for the Flathead County Air Pollution Control Program. A second hearing was held on January 24, 1992, to address the Plum Creek Manufacturing, Inc. permit and the Columbia Falls PM–10 SIP. The State supplied evidence that adequate public notice for these hearings was provided. Following the public hearings, the local air pollution control plan and the Columbia Falls PM–10 SIP were adopted by the State. The submittal for the Flathead County Air Pollution Control Program was signed by the Governor on November 25, 1991. The submittal for the final Columbia Falls PM–10 SIP was signed by the Governor on May 6, 1992. The final plan was received by EPA on May 12, 1992 as a proposed revision to the SIP.

The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1992). The submittal was found to be complete and a letter, dated August 7, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In today's action EPA proposes to approve the Montana PM–10 SIP submittals for Columbia Falls, as dated November 25, 1991 (with the exception of the Kalispell specific rules) and May 6, 1992, with technical revisions dated June 15, 1993, and invites public comment on the action.

2. Accurate Emission Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emission inventories must be received with the submission (see 57 FR 13539).

Columbia Falls' base year emission inventory was developed for July 1, 1989, through June 30, 1990. The results were segregated into seasonal winter and spring emissions. On an annual basis, industrial facilities account for 56.5% of the PM–10 emissions, with industrial processes and fugitive industrial road dust responsible for 78.8 and 21.2% of this percentage, respectively. Area sources account for 43% of the total annual PM–10 emissions, with re-entrained road dust responsible for 89% of all area source contributions. Residential wood burning area sources accounted for 4.3% of total annual PM–10 emissions in Columbia Falls. The emission inventory shows that the emissions are seasonal, with re-entrained road dust the primary source

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

in the summer and industrial sources the largest contributor during the fall, winter, and spring.

EPA is proposing to approve the emission inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[4] For further details see the TSD for this proposed action.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

Five sources/source categories were identified as contributing to the PM–10 nonattainment problem in Columbia Falls. In the following table, an outline is presented on these sources, their control measures and associated emissions reduction credit, and effective dates.

Source	Control	PM–10 Emissions Reduction	Effective
Re-entrained road dust	Flathead County Rules:		
	601 Sanding & chip sealing standards	(no credit taken)	10/03/91
	602 Construction and Demolition Activity	(no credit taken)	10/03/91
	603 Pavement of Roads Required	(no credit taken)	10/03/91
	604 Pavement of Parking Lots Required	(no credit taken)	10/03/91
	605 Street Sweeping and Flushing	47% (credit taken only for winter & spring).	10/03/91
	606 Clearing of land greater than ¼ acre in size (requires measures to control dust when clearing areas larger than ¼ acre).	(no credit taken)	10/03/91
	Combined controls	130.7 tpy (during winter & spring).	
Prescribed burning	Flathead County Rules:		
	201 (Open Burning) Definitions	(no credit taken)	10/03/91
	202 Materials Prohibited	(no credit taken)	10/03/91
	203 Minor Open Burning Source Requirements	(no credit taken)	10/03/91
	204 Major Open Burning Source Requirements	(no credit taken)	10/03/91
	205 Special Open Burning Periods	(no credit taken)	10/03/91
	206 Fire Fighter Training	(no credit taken)	10/03/91
	207 Conditional Air Quality Open Burning Permits	(no credit taken)	10/03/91
	208 Emergency Open Burning Permits	(no credit taken)	10/03/91
	209 Permit Fees	(no credit taken)	10/03/91
Residential wood combustion	Flathead County Air Pollution Control Program, CHAPTER VIII, Sub-chapter 3, Voluntary Solid Fuel Burning Device Curtailment Program and Sub-chapter 4, Prohibited Materials for Wood or Coal Residential Stoves.	(no credit taken)	10/03/91
Industry	Plum Creek permit modification #2667–M	(no credit taken)	1/24/92
Motor vehicle exhaust	Federal tailpipe standards	(no credit taken)	Ongoing due to fleet turnover

A more detailed discussion of the source/source category contributions and their associated control measures (including available control technology) can be found in the TSD for this proposed action. 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 will result in the attainment of the PM–10 NAAQS by December 31, 1994. By this action EPA is proposing to approve the Columbia Falls PM–10 plan's RACM (including RACT) in its entirety.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994, or the State must show that attainment by December 31, 1994 is impracticable (see section 189(a)(1)(B) of the Act). The attainment demonstration for Columbia Falls was conducted using receptor modeling (CMB) and rollback modeling. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (μg/m³), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ (id.)

The demonstration for Columbia Falls indicates that the 24-hour PM–10 NAAQS will be attained by December 31, 1994 at 136.3 μg/m³, and it will be maintained in future years. The demonstration indicated that an annual concentration of 31.1 μg/m³ will be achieved by 1995,[5] showing attainment of the annual PM–10 NAAQS. Ambient

[4] EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the revised Act.

[5] 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 proposing to approve the State's demonstration on the basis of the de minimis differential between the two dates. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State has demonstrated attainment in the Columbia Falls nonattainment area.

monitoring has not measured an exceedance of the PM–10 NAAQS in Columbia Falls since 1987. The control strategies used to achieve these design concentrations are summarized in the section titled "RACM (including RACT)." For a more detailed description of the attainment demonstration and the control strategies used, see the TSD for this proposed action.

5. PM–10 Precursors

The control requirements that are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels over the NAAQS in that area (see section 189(e) of the Act). An analysis of air quality and emissions data for the Columbia Falls nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate emissions from re-entrained road dust, stationary sources and residential wood burning. Neither the emission inventory nor the CMB analysis for Columbia Falls revealed any major stationary sources of PM–10 precursors. Consequently, EPA is proposing to find that major sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS. The consequences of this proposed finding are to exclude these sources from the applicability of PM–10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this proposed action. Note that while EPA is proposing to make a general finding for this area, today'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. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). The State of Montana's PM–10 SIP indicates that the Montana Department of Health and Environmental Sciences (MDHES) and the Flathead County Health Department (FCHD) will submit to EPA a reasonable further progress/milestone report consistent with federal guidelines by December 31, 1994.[6]

In addition, FCHD will prepare less detailed annual progress reports for the prior year by August 1st each year. These annual progress reports shall provide information on the effectiveness of the control strategies for re-entrained road dust. The MDHES will add a progress report for the Plum Creek facility.

To monitor the progress of the road dust control rules, a report will be completed on the type and amount of de-icing and sanding material applied, the number of applications of de-icing and sanding materials, the dates of application of each material, and where and when the street sweeping and flushing occurred during the winter season. The sanding material test results for the percent silt and durability also will be submitted.

All exceedances of the PM–10 standard will be evaluated and a determination made as to the source of the exceedance. Changes in the air quality program to prevent further exceedances and a timetable for implementation will be developed. Any other EPA requirements for RFP reports will be incorporated as necessary.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The specific control measures contained in the SIP are addressed above in section 3, "RACM (including RACT)." The Columbia Falls air pollution control regulations, as included in the SIP, are legally enforceable by FCHD. Any person who violates any provision or rule, with the exception of the voluntary solid-fuel burning device rule, or order under this program shall be subject to a civil penalty not to exceed $500.00.

The Flathead County Pollution Control Program and the associated local regulations are also enforceable by the MDHES, if the FCHD fails to administer the program. Since the program has been approved by the Montana Board of Health and Environmental Sciences (MBHES) in accordance with section 75–2–301 of the Montana Code Annotated and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, sections 75–2–401 through 75–2–429, Montana Code Annotated.

The emission limits for Plum Creek are enforceable by the MDHES through air quality permit #2667–M with a final modification date of January 24, 1992. Section 75–2–401 of the Montana Code Annotated allows the MDHES to seek civil penalties for a violation of a permit limitation. Administrative Rules of Montana (ARM) 16.8.1112 allows the MDHES to revoke a permit for a violation of a permit limitation. These regulations are contained in the ARM 16.8.101 through 16.8.1602 and violations of these rules are punishable by civil penalties in an amount up to $10,000 per day and criminal penalties in an amount up to $1,000 per day.

If a State relies on a local government for the implementation of any plan provision, then, according to section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation when, for example, the State has the authority and resources to implement the provision, and the local entity has failed to do so.

The Flathead County Air Pollution Control Program was established in accordance with the requirements of section 75–2–301 of the Montana Code Annotated, as amended (1991). On November 15, 1991, the MBHES issued a board order approving the local program and regulations. A stipulation between the MDHES and the Flathead County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed November 15, 1991. The regulations, board order, and stipulation were submitted to EPA as a revision to the Montana SIP.

The State also submitted a state Attorney General's opinion interpreting the authority of the MDHES to enforce

[6] Thus, this report will be submitted coincident with the December 31, 1994 attainment date. The de minimis timing differential between the first milestone submittal date (i.e. November 15, 1994) and the attainment date make it administratively impracticable to require separate submittals. *See generally* 57 FR 13539.

any state and local air quality provisions if a local air quality program fails to do so. In practice, the MBHES issues a board order when it approves a local program or amendments to a program. Since the Montana Clean Air Act authorizes the MDHES to enforce board orders issued by the MBHES, the MDHES has the authority to assume jurisdiction over, and implement, a local program so approved. However, the Montana Clean Air Act also requires a hearing before the MBHES before such an assumption of jurisdiction and authority can be taken.

The Flathead County rules are in effect now, as are the State's permit modification for Plum Creek. The State of Montana has a program that will ensure that the measures contained in the Columbia Falls PM–10 SIP are adequately enforced. EPA believes that the State's and Columbia Falls' existing air enforcement program will be adequate. The TSD for this proposed action contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510–13512 and 13543–13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon EPA's determination that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. The Columbia Falls nonattainment area SIP contains an outline of steps to be taken if attainment of the PM–10 standard is not achieved; however, these steps do not adequately satisfy the contingency measures requirement. Since the SIP does not provide for these measures to take effect without further action should EPA determine that Columbia Falls has failed to achieve RFP or to attain the PM–10 standard by December 31, 1994, EPA is taking no action at this time on the Columbia Falls contingency measures. The State has until November 15, 1993 to submit its contingency measures.

III. Implications of This Action

EPA is proposing to approve the PM–10 SIP submitted to EPA on November 25, 1991 (with the exception of the Kalispell specific rules, 501–506) and on May 6, 1992 for the Columbia Falls, Montana nonattainment area. Among other things, the State of Montana has demonstrated that the Columbia Falls moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994.

EPA is also proposing to approve the Flathead County Air Pollution Control Program as it applies to Columbia Falls, which was submitted to EPA on November 25, 1991. The portion of the plan concerning the Kalispell PM–10 nonattainment area will be acted upon in a separate action.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this document, EPA will consider any comments received by February 28, 1994.

V. Executive Order (EO) 12866

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

VI. Regulatory Flexibility

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 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 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).

List of Subjects in 40 CFR Part 52

Environmental/Protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 11, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–1736 Filed 1–26–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL12–32–6227; FRL–4829–7]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: On October 1, 1993, (58 FR 51279) the Environmental Protection Agency (EPA) proposed rulemaking in response to an October 22, 1990, Petition for Reconsideration filed with the Administrator. This Petition requested that EPA reconsider and revise the requirements of the Chicago Federal Implementation Plan (FIP) for Ozone (which was promulgated June 29, 1990 (55 FR 26814)) as they pertain to Stepan Company's Millsdale Plant (Stepan) manufacturing facility in Elwood, Illinois.

On December 2, 1993 (58 FR 63547) at the request of Stepan, EPA extended the comment period until December 16, 1993. On December 2, 1993, Stepan requested that the comment period be extended until February 15, 1994 based upon the complexity of the proposed rule and issues raised about the content of the record. At Stepan's request EPA

is extending the public comment period until February 15, 1994.

DATES: Comments on this proposal must be received by February 15, 1994.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this proposal.

Docket: Pursuant to sections 307(d)(1)(B) and (N) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1) (B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A-92-36, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Jacqueline Brown before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886-6036.

U.S. Environmental Protection Agency, Docket No. A-92-36, Air Docket (LE-141), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, (312) 886-6052, at the Chicago address indicated above.

Dated: January 13, 1994.

David A. Kee,

Acting Regional Administrator.

[FR Doc. 94-1732 Filed 1-26-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[OH-16-1-5320; FRL-4830-4]

Approval and Promulgation of Air Quality Implementation Plans for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to conditionally approve revisions to the emission limitations, compliance methodologies, and compliance time schedules in Ohio's State Implementation Plan for sulfur dioxide (SO_2) as it applies to sources in Hamilton County. These revisions are being proposed in response to modeling analyses which have predicted violations of the SO_2 National Ambient Air Quality Standards (NAAQS) due to emissions from sources in Hamilton County.

DATES: Comments on this requested revision and on the proposed EPA action must be received by February 28, 1994.

ADDRESSES: Written comments should be addressed to: William MacDowell, Chief, Regulatory Development Section, Air EnforcementBranch (AE-17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6713.

SUPPLEMENTARY INFORMATION:

EPA's analysis is discussed in the following manner: I. Background; II. Attainment Demonstration; III. Compliance; and IV. Proposed Action.

I. Background

The Environmental Protection Agency (EPA) approved portions of the Ohio SO_2 State Implementation Plan (SIP) for Hamilton County on January 27, 1981 (46 FR 8481), and April 20, 1982 (47 FR 16784), and the remaining portion on May 13, 1982 (47 FR 20586). The portion of Hamilton County which was originally designated a nonattainment area for SO_2 was redesignated to attainment on March 19, 1982 (47 FR 11870). Hamilton County was divided into two separate attainment areas on May 13, 1982 (47 FR 20586). However, since the time of those rulemakings, three modeling analyses have been submitted to EPA which predicted violations of the SO_2 National Ambient Air Quality Standards (NAAQS) due to SO_2 emissions from existing sources that are located in Hamilton County, Ohio.

Based on the predicted violations, EPA notified the Governor of Ohio on December 22, 1988, under section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H), that the SIP for SO_2 is substantially inadequate to attain and maintain the SO_2 NAAQS in Hamilton County. The notification provided the State with 60 days to submit a commitment and schedule for the development of an approvable SIP and up to 18 months from the date of notification to submit a fully State adopted SO_2 plan for Hamilton County, which assures the attainment and maintenance of the SO_2 NAAQS both in Hamilton County and the surrounding area.

On June 28, 1991, Valdas V. Adamkus, Regional Administrator, EPA, sent a letter to Donald R. Schregardus, Director, OEPA formalizing an agreement between EPA and OEPA regarding action toward SO_2 attainment status for Hamilton County, Ohio. On September 9, 1991, OEPA sent EPA a proposed revision to the Hamilton County SO_2 SIP. The signed State adopted rules were received by EPA on October 18, 1991. The rules package submitted for approval consisted of revisions to Ohio Administrative Code (OAC) 3745-18-03 *Attainment Dates and Compliance Time Schedules*, (OAC) 3745-18-04 *Measurement Methods and Procedures*, and OAC 3745-18-37 *Hamilton County Emission Limits*, as well as a modeling analysis intended to demonstrate that the limits in these regulations are sufficient to assure attainment of the NAAQS for SO_2 in Hamilton County. A completeness review was performed and, on November 8, 1991, EPA determined that the package was complete.

On May 7, 1992, William L. MacDowell, Chief, Regulation Development Section-Region 5, EPA, sent a letter to Robert Hodanbosi, of the OEPA, detailing issues EPA had identified in the State's September 9, 1991 submittal. On March 19, 1993, the State responded with a subsequent submittal which addressed the above mentioned issues, and included a Director's Finding and Order governing the operation of selected boilers at Cincinnati Gas and Electric's Miami Fort facility. Additional technical information supporting the March 19th submittal was received from OEPA by EPA on May 18, 1993.

A major issue in the development of the revised submittal involved the incorporation of the Rough Terrain Diffusion Model (RTDM). The RTDM is one of many computer models available used to simulate the dispersion of air pollutants. A "Model Evaluation and Comparison Study" was conducted by the Greater Cincinnati Chamber of Commerce, in cooperation with the OEPA and EPA Region 5, in order to determine which model, or combination of models, (Industrial Source Complex (ISC) Short-term model or the RTDM) was most accurate in predicting SO_2 concentrations in Hamilton County. This study was conducted in accordance with a protocol that EPA agreed to on October 31, 1990, and in accordance with EPA document entitled

"Interim Procedures for Evaluating Air Quality Models (Revised)," 1984. Based on the results of the study, EPA approved the RTDM model for use in modeling sulfur dioxide sources in Hamilton County in a June 9, 1992, letter from David Kee, Director, Air and Radiation Division, to Robert Hodanbosi, Chief, Division of Air Pollution Control. The model/monitor comparison study is discussed more completely in the Technical Support Document associated with this document.

II. Attainment Demonstration

The principal requirement for the Ohio SO_2 SIP under section 110, as identified in the SIP deficiency notice, is that the plan provides sufficient enforceable measures to assure attainment of the NAAQS for SO_2. As noted above, the State provided enforceable limits in the form of State regulations, supplemented by an administrative order for one source, along with an air dispersion modeling analysis which demonstrates that these limits assure attainment in the Hamilton County area. The modeling techniques used in the demonstration supporting this revision were based on procedures in the "Guideline on Air Quality Models (Revised)," July 1986, including "Supplement A," July 1987. The modeling methodology is discussed more fully in the Technical Support Document.

The attainment demonstration incorporated three different air dispersion models: Industrial Source Complex Short-Term (ISCST), COMPLEX I (Valley Screen Mode for analyzing intermediate terrain), and the Rough Terrain Diffusion Model (RTDM). Some basic components of the modeling methodology are:

Meteorological Data–The ISCST modeling used the most recent five years of meteorological data while RTDM used one year of meteorological data collected in Hamilton County.

Rural/Urban Classification–Western Hamilton County sources were modeled in the Rural mode while sources in the east were modeled using Urban mode 3.

Emission Inventory–The emission sources used in the modeling represent maximum short-term operating rates and stack parameters. Actual operating factors were gathered and used to evaluate annual SO_2 predicted concentrations.

Background Concentrations–The 3-hour, 24-hour, and annual averaging background concentrations were determined for both the eastern and western grids. The background values were based on monitoring data and are considered representative of SO_2 concentrations being contributed from unmodeled sources in the Hamilton County area.

Good Engineering Practice (GEP) stack heights or actual stack heights, where appropriate, were used in Ohio's modeling in accordance with EPA guidance. However, a January 22, 1988, remand in a U.S. D.C. Court of Appeals case involving EPA stack height regulations remains unresolved [1]. It is possible that future resolution of this case will result in the State being required to revise the emission limitations for the CG&E Miami Fort facility.

In the modeling for the attainment demonstration for Hamilton County, the State did not use the most recent version of the Industrial Source Complex model, known as ISC2. The ISC2 version of the Industrial Source Complex model was released after the State submitted its SIP to EPA, and well after the completion of the ISCST modeling used to determine appropriate SIP limits. Consequently, EPA proposes to accept analysis under the older model for the purpose of this SIP review. However, acceptance of the ISCST analysis for this reason should not apply to any other analysis of this area to support any future regulatory action.

Although the majority of the attainment demonstration was comprised of output from ISCST, several areas of Hamilton County were modeled using RTDM. The RTDM modeling was performed in accordance with the EPA approved "Model Evaluation and Comparison Study" described earlier. The modeling demonstration accompanying the SIP revision submittal incorporated dispersion modeling output from the ISCST model in combination with RTDM.

The issues identified in the May 7, 1992, letter from William L. MacDowell, Chief, Regulation Development Section-Region 5, EPA to Robert Hodanbosi, of the OEPA, regarding the September 9, 1991 submittal, needed to be resolved before EPA could approve the SIP revisions. One of those issues involved modeled SO_2 violations near the Joseph E. Seagram and Sons, Inc. (Seagram's) facility in Dearborn County, Indiana. These modeled violations were primarily due to emissions from the Seagrams facility in Indiana. However, CG&E, located in Hamilton County, Ohio, contributed to the critical concentration in that area.

In response to the modeled violation, a commitment has been obtained from Seagram's, formalized in a letter from Seagrams to both the OEPA and the Indiana Department of Environmental Management, dated September 1, 1992, agreeing to not operate its two boilers simultaneously on sulfur-bearing fuels without written permission from both State Agencies. Utilizing this commitment, the OEPA submitted supplementary modeling which demonstrated that areas near Seagrams, in Indiana, did not exceed the sulfur dioxide NAAQS. However, in order for the Seagrams limit to be federally enforceable, it must be incorporated into the Indiana sulfur dioxide SIP. Therefore, the Hamilton County SO_2 SIP revision will be approved if the Seagrams commitment, described above, is adopted into the Indiana SO_2 SIP within one year from the date of publication of the Hamilton County SO_2 SIP revision final rulemaking. This issue and other issues addressed by Ohio's submittals of March 19, 1993, and May 18, 1993, are discussed in detail in the Technical Support Document.

Based on the foregoing, EPA concludes that the results from Ohio's modeling demonstration, utilizing the ISCST and RTDM air dispersion models, show that when the applicable emission limits and other restrictions are imposed, attainment of the NAAQS for SO_2 will be demonstrated in and around Hamilton County.

III. Compliance

The general compliance determination method denoted in OAC 3745–18–04(D)(7), which applies specifically to Hamilton County, utilizes stack gas sampling using Methods 1 through 4 and 6, 6A, 6B, or 6C, as specified in 40 CFR 60.46, for any fuel burning equipment. Additional compliance monitoring is required under OAC 3745–18–04(D)(8), which, on a source-specific basis, requires either daily or weekly coal sampling. EPA has determined, based on guidance contained in the "General preamble for future proposed rulemakings," published in the **Federal Register** on April 16, 1992 (57 FR 13498), that compliance methods 1 through 4, 6, 6A, 6B, and 6C, in conjunction with regular fuel sampling, provide for continuous SO_2 compliance monitoring.

[1] Certain provisions of the July 8, 1985, stack height regulations were remanded to *USEPA in NRDC* v. *Thomas* (D.C. Cir. No. 85–1488 *et. al.* (January 22, 1988)). These are grandfathering stack height credits for sources who raise their stacks prior to October 2, 1983, up to the height permitted by GEP formula height (40 CFR 51.100(KK)(2)), dispersion credit for sources originally designed and constructed with merged or multi-flue stacks (40 CFR 51.100(hh)(2)(ii)(A)), and grandfathering credit for refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51.100(ii)(2)).

Additionally, documentation criteria listed in OAC 3745–18–04(I) requires sources subject to the Hamilton County emission limits to document and retain information needed to demonstrate compliance with applicable emission limits, emission tracking requirements, and/or operating limits.

IV. Proposed Action

Section 110(a)(2) of the Clean Air Act contains general requirements for implementation plans submitted by a State. These are requirements which apply to all SIPs submitted by a State including attainment area plans, such as the plan for Hamilton County. A fundamental requirement of this section is that each plan must include enforceable emission limitations and other techniques necessary to meet the applicable requirements of the Clean Air Act. EPA has determined that the emission limits and control measures listed in the SO_2 SIP revision for Hamilton County, when fully implemented, will be enforceable, and, will provide for attainment of the NAAQS for SO_2, and thus satisfy the applicable requirements. As stated above, this determination is contingent upon the Seagrams limits being incorporated into the Indiana SO_2 SIP and, as a result, made federally enforceable.

Therefore, EPA is proposing to conditionally approve revisions to Ohio Administrative Code (OAC) rules 3745–18–03, 3745–18–04, and 3745–18–37. The OAC rules 3745–18–03 *Attainment Dates and Compliance Time Schedules* provide specific time schedules for sources receiving revised emission limits to implement necessary changes and demonstrate compliance. The OAC rules 3745–18–04 *Measurement Methods and Procedures* specify the compliance determination methodologies for sources receiving revised emission limits. The OAC rules 3745–18–37 *Hamilton County Emission Limits* amend the sulfur dioxide emission limits for Hamilton County. EPA is also proposing to approve the Director's Findings and Order containing a fuel quality limit for select sources at Cincinnati Gas and Electric's Miami Fort facility.

Under section 110(k)(4), pertaining to conditional approval, the SIP elements regarding the Seagrams limits must be adopted by the State of Indiana, by a date not later than one year after the date of approval of the Hamilton County, Ohio SIP revision. In addition, the adopting State must submit these rules to EPA within a reasonable time after such adoption. In this case, if the State of Indiana fails to adopt or submit the necessary rules to EPA within the required time frame (one year from the date of final approval of the Hamilton County, Ohio SO_2 SIP revision), this approval would become a disapproval upon USEPA notification of Ohio by letter. The EPA subsequently would publish a notice announcing this action in the **Federal Register**. If the State of Indiana adopts and submits the rule within the above timeframe, the conditionally approved rules would remain a part of the SIP pending final action on the new submittal.

Public comments are solicited on the requested SIP revision and on EPA's proposal to conditionally approve. Public comments received by February 28, 1994 will be considered in the development of EPA's final rulemaking action.

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

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 (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12866 for a period of 2 years. EPA has submitted a request for a permanent waiver for Table 2 and 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 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.

Conditional 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.

If the conditional approval is converted to a disapproval under section 110(k), based on a State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because itdoes not remove existing state requirements nor does it substitute a new Federal requirement. 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, (1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: December 29, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–1737 Filed 1–26–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC33

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate critical habitat for the threatened marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California under the Endangered Species Act, as

amended (Act). The marbled murrelet is a small seabird of the Alcidae family that forages in the near-shore marine environment and nests in large trees in coniferous forest along the coast.

Proposed critical habitat units are located on Federal lands. This proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by Federal agencies. Section 4 of the Act requires the Service to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of including particular areas in the designation.

DATES: Comments from all interested parties must be received by April 27, 1994. Public hearing requests must be received by March 14, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Assistant Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 911 Northeast 11th Avenue, Portland, Oregon 97232. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Ecological Services, at the above address (503/231–6159).

SUPPLEMENTARY INFORMATION:

Previous Federal Action

On January 15, 1988, the U.S. Fish and Wildlife Service (Service) received a petition to list the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California as a threatened species under the Endangered Species Act of 1973, as amended (Act). On October 17, 1988 (53 FR 40479), the Service published a finding that the petition had presented substantial information indicating that the requested action may be warranted. Because of the increased research effort and new information available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990, through May 31, 1990 (55 FR 4913).

On June 20, 1991 (56 FR 28362), the Service published a proposal to list the marbled murrelet in Washington, Oregon, and California as a threatened species. The comment period was reopened for 30 days on January 30, 1992 (57 FR 3804), to gather the most updated information on the species. Following a court order by the U.S. District Court for the Western District of Washington denying a 6-month extension, the Service published the final rule listing the marbled murrelet in Washington, Oregon, and California as a threatened species on October 1, 1992 (57 FR 45328).

On November 2, 1993, the U.S. District Court for the Western District of Washington granted a motion by the plaintiffs in *Marbled Murrelet* v. *Babbitt* to compel a proposed designation of critical habitat. In the ruling, the court ordered the Secretary to propose designating critical habitat for the marbled murrelet no later than January 21, 1994, and to make a final designation of critical habitat as soon as reasonably possible under applicable law.

Ecological Considerations

The marbled murrelet (*Brachyramphus marmoratus*) is a small seabird of the Alcidae family. The North American subspecies (*Brachyramphus marmoratus marmoratus*) ranges from the Aleutian Archipelago in Alaska eastward to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound, south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon to central California. Some wintering birds are found in southern California. A separate subspecies (*Brachyramphus marmoratus perdix*) occurs in Asia.

Marbled murrelets spend the majority of their lives at sea, where they feed primarily on small fish and invertebrates in near-shore marine waters. Marbled murrelets nest inland, predominately in older, large-limbed trees in dense forest. Marbled murrelets have been found occasionally on rivers and inland lakes (Carter and Sealy 1986).

The marbled murrelet is a social species that is semi-colonial around the breeding site. Two nests discovered in Washington during 1990 were located within 46 meters (150 feet) of each other (Hamer and Cummins 1990), and detections of marbled murrelets exhibiting behaviors associated with nesting activity are often aggregated.

Nesting occurs over an extended period from early April to late September (Carter and Sealy 1987). Marbled murrelets have been observed at some inland sites during all months of the year (Paton *et al.* 1987, Naslund 1993). During the breeding period, adult marbled murrelets lay a single egg in a tree containing structures suitable for nesting (e.g., limbs at least 13 centimeters (cm) (5 inches) in diameter, mistletoe infections, witches brooms, deformities). Both sexes incubate the egg in alternating 24-hour shifts for approximately 30 days, and the young fledge after an additional 28 days (Simons 1980, Hirsch *et al.* 1981, Singer *et al.* 1991). Inland flights by adults feeding young are made from ocean feeding areas to nest sites at all times of the day, but most often at dusk and dawn (Hamer and Cummins 1991). Chicks are fed at least once a day. The adults carry only one fish at a time to the young (Carter and Sealy 1987; Hamer and Cummins 1991; Singer *et al.* 1992; Nelson, Oregon Cooperative Wildlife Research Unit, *pers. comm.* 1992). The young are altricial, but remain in the nest longer than young of most other alcids. Before leaving the nest, the young molt into a distinctive juvenile plumage. Fledglings fly directly from the nest to the sea rather than exploring the forest environment first (Hamer and Cummins 1991).

For the purpose of proposing critical habitat, the Service has concentrated on two components of marbled murrelet habitat: (1) Nesting habitat; and (2) habitat needed to support foraging. Forest stands with conditions that will support nesting marbled murrelets are referred to as "suitable nesting habitat."

Throughout the forested portion of the species' range, marbled murrelets nest near the marine environment in forest stands containing characteristics of older forests (Binford *et al.* 1975; Sealy and Carter 1984; Carter and Sealy 1987; Carter and Erickson 1988; Marshall 1988; Paton and Ralph 1988; Nelson 1989; Burger, University of Victoria, *in litt.* 1990; Hamer and Cummins 1990, 1991; Quinlan and Hughes 1990; Kuletz 1991; Nelson *in litt.* 1991; Singer *et al.* 1991, 1992; Nelson 1992; Nelson *et al.* 1992).

Historically, nesting habitat for the marbled murrelet was widely dispersed, particularly in the wetter portions of its range in Washington, Oregon, and California. This habitat was generally found in very large, contiguous blocks.

Currently, the threatened population of marbled murrelets nests in most of the major types of coniferous forests in the western portions of Washington, Oregon, and north-central California, wherever older forests remain in close proximity to the coast. Habitat in the drier parts of the listed species' range (portions of southern Oregon and northern California) is less continuous, occurring naturally in a mosaic pattern. Although marbled murrelet nesting habitat is somewhat variable over the range of the species, some general habitat attributes are common throughout its range, including nesting structure, canopy closure, stand size, tree species, landscape condition, and distance from the marine environment.

Individual tree attributes that provide conditions suitable for nesting include branches at least 13 cm (5 inches) in diameter, deformities (e.g., broken tops), mistletoe infections, witches brooms, or other structures providing a platform for nesting (Carter and Sealy 1987; Hamer and Cummins 1990, 1991; Singer *et al.* 1991, 1992; Ralph *et al.* 1993). These structures are typically found in old-growth and mature stands, but may be found in a variety of stand types including younger stands containing remnant large trees.

Sixty-one tree nests have been located in North America, including 35 in the range of the listed population (6 in Washington, 20 in Oregon, and 9 in California) (Binford *et al.* 1975; Varoujean *et al.* 1989; Burger 1990; Quinlan and Hughes 1990; Hamer and Cummins 1990, 1991; Kuletz 1991; Singer *et al.* 1991, 1992; Nelson unpubl. data). All nests in Washington, Oregon, and California were located in old-growth trees that were greater than 81 cm (32 inches) diameter at breast height (dbh). Most nests have been located on large or deformed branches with a moss covering; however, a few nests have been located on smaller branches, and some nests were situated on conifer needles or sticks rather than moss.

Canopy closure over the nest site provides protection from predation and weather. Such canopy closure may be provided by trees adjacent to the nest tree and/or by the nest tree itself. Nests are typically located high above ground and usually have good overhead protection. Such locations allow easy access and provide shelter from potential predators and weather.

Although a few nests have been located in relatively small stands, most nests have been found in larger stands with sufficient internal structure to minimize the risk of predation at the nest (i.e., minimize habitat for species known to prey on marbled murrelets) and provide suitable climatic conditions for nesting (Nelson *in litt.* 1992). Marbled murrelets are more commonly encountered in larger stands of older forests in California (greater than 202 hectares (500 acres)) than in smaller stands (less than 40 hectares (100 acres)). However, marbled murrelets have been detected in smaller isolated stands in Oregon, with one confirmed nest in a 3-hectare (8-acre) stand (Nelson unpubl. data).

General landscape condition also may affect use of suitable nesting habitat. In Washington, marbled murrelet detections increased when old-growth/mature forests comprised over 30 percent of the landscape. Hamer and Cummins (1990) found that detections of marbled murrelets decreased in Washington when the percent of clearcut/meadow on the landscape increased above 25 percent.

Nests have been located in stands dominated by coastal redwood (*Sequoia sempervirens*), Douglas-fir (*Pseudotsuga menziesii*), mountain hemlock (*Tsuga mertensiana*), Sitka spruce (*Picea sitchensis*), western hemlock (*Tsuga heterophylla*), and western red-cedar (*Thuja plicata*) (Binford *et al.* 1975; Quinlan and Hughes 1990; Hamer and Cummins 1991; Singer *et al.* 1991, 1992; Nelson *et al.* in prep). The nests themselves have been located in Douglas-fir, coastal redwood, western hemlock, western red-cedar, and Sitka spruce trees. These species of trees have growth forms that produce nesting opportunities and are susceptible to damage (disease, breakage, wind damage) that may produce nesting structure.

Critical habitat units should occur at a distance from the marine environment consistent with the flight and energetic capabilities of marbled murrelets. The farthest inland known occupied site is 84 kilometers (52 miles) in Washington. The farthest inland known detections in Oregon and California are 61 and 56 kilometers (38 and 35 miles), respectively. Occupied sites are defined as forest stands where marbled murrelets have been observed exhibiting behaviors indicative of likely nesting activity.

Northwestern forests typically require 200 to 250 years to attain the attributes necessary to support marbled murrelet nesting, though characteristics of nesting habitat are sometimes developed in younger redwood forests. Forests with old-age remnant trees remaining from earlier stands may also develop into nesting habitat more quickly than those without. These remnant attributes are products of fire, wind storms, or previous logging operations that did not remove all of the trees. Other factors that may affect the time required to develop suitable nesting characteristics include site productivity and aspects of the site microclimate.

It is difficult to locate actual nests for a species such as the marbled murrelet, which may only show activity near the nest once per day and under low light conditions. Therefore, identification of occupied sites and suitable habitat are the best indicators of potential nest sites. Active nests, egg shell fragments, or young found on the forest floor, birds seen flying through the forest beneath the canopy or landing in trees, birds seen circling above the canopy, birds heard calling from a stationary perch, or large numbers of birds heard calling from within and around a stand are all strong indicators of occupied habitat. Their semi-colonial nature makes marbled murrelets easier to detect at high-use sites, though some areas (e.g., highly fragmented habitat with small stand size) support low numbers of reproducing pairs, making detection difficult.

Breeding populations of marbled murrelets are not distributed continuously throughout the species' range. In California, there are three separate areas where marbled murrelets concentrate at sea, corresponding to the three largest remaining blocks of coastal old-growth forest inland. These are separated by areas of little or no habitat where few marbled murrelets are found at sea.

A large break in the breeding distribution is located at the southern portion of the range in California, where approximately 480 kilometers (300 miles) separate the southern breeding population in San Mateo County from the next known occupied site to the north in Humboldt County. This reach contained marbled murrelets prior to extensive logging in the area (Paton and Ralph 1988). Another distribution gap is located between Tillamook County in Oregon and the Olympic Peninsula in Washington, where few birds and occupied sites are known. The degree of interaction that occurs across these gaps in distribution is unknown.

Very little habitat remains at low elevations in the Puget Trough area of Washington. Lands surrounding the Puget Trough, particularly to the east and south, are highly urbanized or developed for agricultural use, forcing marbled murrelets to fly up to 25 miles inland to reach the first available suitable nesting habitat.

Although marbled murrelets have been heard and/or seen at some inland sites during most months of the year (Paton *et al.* 1987, Naslund 1993), detectability at inland sites increases during the spring and reaches a peak late in summer coincident with the peak in breeding activity (Paton and Ralph 1988, Nelson 1989). In early fall, the number of inland detections decreases markedly, presumably because birds have completed breeding and are undergoing a flightless molt at sea. It is unknown why marbled murrelets visit inland sites during the non-breeding season. Researchers hypothesize that birds attending these areas in fall and winter may be experienced resident birds and that these visits may aid in maintaining nest sites, nesting territories, and pair bonds (Naslund 1993).

Marbled murrelets are currently experiencing very low recruitment rates. Juvenile to adult ratios of marbled murrelets are between 0.012 and 0.035 (i.e., there are between 1 and 4 juvenile fledglings of that year observed for every 100 adults observed) (Strong *et al.* 1993). These results are supported by survey data collected at points along the central coast of Oregon during 1988, 1989, 1990, 1991, and 1992. The average percentage of juveniles in these counts were approximately 1, 4, 2, 5, and 1 percent, respectively (Nelson and Hardin in prep.). Surveys conducted in California have indicated similar juvenile to adult ratios since 1989 (Ralph, U.S. Forest Service, Redwood Sciences Lab, *pers. comm.* 1992). If the juvenile to adult ratios observed in the marine environment are accurate, then only 1 to 5 percent of the observed population is successfully reproducing, that is, successfully fledging young.

Average annual adult survival for stable populations of several other alcid species is approximately 90 percent (Hudson 1985). Alcids typically experience their highest rates of mortality prior to the attainment of breeding age. The average survival to breeding age for alcids is 29 percent (Hudson 1985). The combination of low fledging rates of marbled murrelets, as demonstrated by the juvenile to adult ratios, and low survival to breeding age are likely to produce recruitment rates far below those required to maintain present population levels.

Based upon the longevity of other alcids (Hudson 1985), marbled murrelets are estimated to live an average of 10 years. With such long-lived species, recruitment rates are a more accurate indicator of species condition than population counts. At-sea counts of adult marbled murrelets may reflect a large portion of non-breeders that will not contribute to the future population. If the current low recruitment rates are the result of recent losses of nesting opportunities, counts of adults may not reflect the sustainable population until the population adjusts to remaining nesting habitat.

Another possible explanation for the low juvenile to adult ratios is that individuals are attempting to reproduce, but the young of these birds are experiencing high mortality rates prior to reaching the ocean. Predation at marbled murrelet nest sites may have significant impacts on the population. Predation by corvids (common crows (*Corvus brachyrhynchos*), ravens (*Corvus corax*), and Steller's jays (*Cyanocitta stelleri*)), great horned owls (*Bubo virginianus*), and sharp-shinned hawks (*Accipiter striatus*) have been identified as causes of marbled murrelet nest failure. From 1974 through 1991, approximately 71 percent of all known marbled murrelet nests in the Pacific Northwest failed; 70 percent of these failed due to predation by these species (Nelson *in litt.* 1992).

Corvids are often considered "edge species" that have been found to increase in numbers with increased forest fragmentation (Andren *et al.* 1985, Wilcove 1985, Small and Hunter 1988). Similar findings have been reported in central Oregon regarding great horned owls (Johnson 1993). In addition, corvid predation on small bird nests is known to increase with increased forest fragmentation and/or decreased distance of nests from a forest edge (Gates and Gysel 1978, Andren *et al.* 1985, Small and Hunter 1988, Yahner and Scott 1988). The marbled murrelet's main defense against predation is camouflage. The ability to successfully hide from arboreal predators is likely related to the number of nesting (or hiding) opportunities available. Timber harvest reduces the number of nesting opportunities through the removal of nesting habitat within the landscape, thus reducing the area predators must search.

In addition to effects on marbled murrelet nesting habitat, the species is affected by impacts and threats to their marine foraging habitat and food supply, as well as direct mortality from human activities such as oil spills and gill netting. Attributes of foraging habitat include distance from shore, prey populations, and potential disturbances.

Marbled murrelets are typically distributed in the marine environment in a manner that roughly corresponds to the location of concentrations of inland nesting habitat. Marbled murrelets generally forage in near-shore marine waters.

Marine systems producing sufficient prey to support a stable or growing population of marbled murrelets are important foraging habitat for the species. Marbled murrelets have been reported feeding on a variety of small fish and invertebrates, including Pacific herring (*Clupea harengus*), Pacific sandlance (*Ammodytes hexapterus*), northern anchovy (*Engraulis mordax*), capelin (*Mallotus villosus*), smelt, euphids, *(Eupahsia pacifica, Thysanoessa spinifera)* and mysids (Sealy 1975, Sanger and Jones 1981, Sanger 1987, Carter and Sealy 1990, Strong *et al.* 1993).

Mortality in the marine environment, primarily associated with oil spills and net fisheries in Washington, adversely affects marbled murrelets. The impact of this loss is generally thought to be less than impacts to nesting habitat. Protection of foraging areas from disturbance such as oil spills, net fisheries, and pollution would benefit marbled murrelets.

Management Considerations

Marbled murrelets are found in forest stands containing a variety of forest structures, which are, in part, the result of varied management practices. In many areas, management practices have resulted in fragmentation of the remaining older forests and creation of large areas of younger forests that have yet to develop habitat characteristics suitable for marbled murrelet nesting. Past forest management practices have also resulted in a forest age distribution unnaturally skewed toward younger-aged stands.

In many portions of the range of the marbled murrelet, forest management has historically concentrated on clearcut logging. After forests are clearcut, the areas are traditionally replanted to a single or few tree species and maintained as even-aged stands for maximum wood-fiber production. Site-preparation and management activities may further decrease species diversity. These methods include prescribed burning and the use of herbicides or mechanical methods to control competing vegetation.

Historical logging practices in some portions of the species' range consisted of more selective timber harvesting, leaving remnant patches of forests of varying ages with older forest characteristics. The uneven-age management practices used in these areas usually resulted in more diverse stands, but with few trees containing suitable marbled murrelet nesting structure. These areas may contain low concentrations of reproducing marbled murrelets, which are difficult to locate.

Current and historic marbled murrelet habitat loss is generally attributed to timber harvest and land conversion practices, although natural disturbances such as forest fires have caused losses as well. Reduction of the remaining older forest has not been evenly distributed over western Washington, Oregon, and California. Harvest has been concentrated at the lower elevations and in the Coast Ranges (Thomas *et al.* 1990), generally equating with the range of the marbled murrelet.

Habitat for marbled murrelets has been declining since the arrival of European settlers. Information specific to the range of the marbled murrelet is not available; however, historic forest condition has been estimated for western Oregon and Washington by

several authors. Because marbled murrelet habitat represents a significant portion of area included in these estimates, trends in habitat are assumed to follow the same general pattern. Although the extent of mature and old-growth forest before the 1800s is difficult to quantify, western Oregon and Washington are estimated to have been covered by approximately 9.7 to 11.3 million hectares (24 to 28 million acres) of forest at the time of modern settlement (early to mid-1800s), of which about 70 percent (5.6 to 7.7 million hectares (14 to 19 million acres)) are estimated to have been old-growth (Society of American Foresters Task Force 1983, Morrison 1988, Norse 1988, Spies and Franklin 1988). Historical estimates for northwestern California are not as precise but suggest there were between 526,000 and 1.3 million hectares (1.3 and 3.2 million acres) of old-growth Douglas-fir/mixed conifer forest and approximately 890,000 hectares (2.2 million acres) of old-growth coastal redwood forest (Society of American Foresters Task Force 1983, Laudenslayer 1985, California Department of Forestry and Fire Protection 1988, Fox 1988, Morrison 1988). Currently, there are approximately 1.4 million hectares (3.4 million acres) of old-growth forest remaining in western Oregon and Washington, an 82 percent reduction from estimated prelogging levels (Booth 1991).

Some of the old-growth areas that have been affected by past natural perturbations such as forest fire and windthrow currently provide suitable nesting habitat for marbled murrelets. Mature forests that have naturally regenerated from such perturbations often retain scattered old-growth trees and clumps, providing structure for nesting. This is particularly true in coastal Oregon where there were extensive fires historically. Marbled murrelet nests have been found in remnant old-growth trees in mature forests in Oregon; no occupied sites have been located in young stands, clearcuts, or young forests that lack at least some remnant old-growth trees (Nelson *pers. comm.* 1992).

Forests generally require 200 to 250 years to develop old-growth characteristics that supply adequate structure for nesting marbled murrelets. This time period may be shorter in redwood forests and in areas where significant remnants of the previous stand remain. Intensively managed forests in Washington, Oregon, and California have been subjected to average cutting rotations of 70 to 120 years (USDI 1984, USDA 1988). Cutting rotations of 40 to 50 years are common for some private lands. Timber harvest strategies on Federal lands and some private lands have emphasized dispersed clearcut patches and even-aged management. Thus, forest lands that are intensively managed for timber production are generally not allowed to develop the old-growth characteristics that are required for marbled murrelet nesting. Suitable nesting habitat that remains under these harvest patterns is highly fragmented.

Previous Management Efforts

Since the listing of the marbled murrelet in Washington, Oregon, and California as threatened, several different approaches to management of the species or its habitat have been developed through various Federal efforts.

In May 1991, the U.S. House of Representatives' Agriculture and Merchant Marine and Fisheries Committees commissioned the Scientific Panel on Late-Successional Forest Ecosystems (Scientific Panel) to provide an array of alternatives for the management of late-successional forests on Federal lands within the range of the northern spotted owl (*Strix occidentalis caurina*). Information on the known inland locations of marbled murrelets and marbled murrelet habitat was included in the base information used by the Scientific Panel and was specifically considered in developing the alternatives. These reserve systems are often referred to as Late-Successional/Old-Growth areas (LSOGs). The Scientific Panel conducted risk assessments for marbled murrelets under each alternative (Johnson *et al.* 1991).

In 1993, the Forest Service released its Scientific Analysis Team Report (Thomas *et al.* 1993). In this report, the Forest Service proposed several interim measures designed to preserve options for management of marbled murrelets and their habitat until the Marbled Murrelet Recovery Plan could be completed and implemented. These measures include: (1) The protection of all marbled murrelet nesting habitat within 35 miles of the marine environment in California and Oregon south of State Highway 42, and within 50 miles of the marine environment in the remainder of Oregon and in Washington; and, (2) the protection of amounts of "recruitment" habitat (young stands likely to develop into suitable habitat) equivalent to 50 percent of the total amount of existing suitable habitat in the above mentioned zones. Also, seasonal restrictions on operations in and near suitable habitat were identified to avoid disturbing nesting marbled murrelets.

In July 1993, the Fish and Wildlife Service, Forest Service, Bureau of Land Management, National Park Service, National Marine Fisheries Service, and Environmental Protection Agency released the Report of the Forest Ecosystem Management Assessment Team (FEMAT Report) (USDA *et al.* 1993a). From this report, the President identified Option 9 as the Proposed Northwest Forest Plan, described in the Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (DSEIS) as Alternative 9 (Alternative 9) (USDA *et al.* 1993b). Within the range of the marbled murrelet, Alternative 9 would designate a system of Late-Successional Reserves, which provides large areas expected to eventually develop into contiguous, unfragmented forest. This reserve system was constructed in part around the LSOGs designated by the Scientific Panel. In addition, specific measures were included to protect all forest sites occupied by marbled murrelets outside the reserve system. These measures include surveys prior to activities that affect habitat and protection of contiguous marbled murrelet nesting and recruitment habitat (stands capable of becoming suitable within 25 years) within 0.5 mile of areas occupied by murrelets.

The Service recognizes the value of the Proposed Northwest Forest Plan (USDA *et al.* 1993a) and acknowledges that it can play an integral role in marbled murrelet conservation. The Plan complements this critical habitat proposal by stressing the need for protection of large, unfragmented areas of suitable nesting habitat that are well-distributed throughout the species' range, with special emphasis on areas close to the marine environment.

Critical Habitat

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination * * * that such areas are essential for the conservation of the

species." The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary * * *."

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation should identify lands that may be needed for a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed or before a recovery plan is completed, the Service frequently does not know all the habitat areas that may be essential for a species' recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery.

The designation of critical habitat is one of several measures available to contribute to the conservation of a listed species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether or not they are currently occupied by the listed species, thus alerting the public to the importance of an area in the species' conservation. Critical habitat also identifies areas that may require special management or protection. The added emphasis on these areas for conservation of the species may shorten the time needed to achieve recovery.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. Federal agencies must ensure that their actions do not result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas, establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat), or have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and in section 7 consultations.

Primary Constituent Elements

A designation of critical habitat begins by identifying areas on which are found the physical and biological features essential to conservation of a species. In determining which areas to designate as critical habitat, the Service considers those physical and biological features that are essential to a species' conservation and that may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations upon the best scientific data available (50 CFR 424.12). In proposing to designate critical habitat for the marbled murrelet in Washington, Oregon, and California, the Service has reviewed its overall approach to the conservation of the species. For a thorough discussion of the ecology and life history of the marbled murrelet, see the Service's Biological Report (Marshall 1988), the final rule listing the Washington, Oregon, and California population (57 FR 45328) of this subspecies, and the Ecological Considerations section of this rule.

Within habitat areas essential for marbled murrelet nesting, the Service has focused on the following primary constituent elements: (1) Individual trees with potential nesting platforms; (2) forest stands surrounding potential nest trees, including contiguous forest with similar average height and canopy closure; (3) forest stands with high crown cover and sufficient height to contribute to a forest landscape with decreased fragmentation; and (4) forest stands within the potential flight distance of marbled murrelets from the marine environment where the birds feed. These primary constituent elements are essential to provide nesting habitat for the marbled murrelet.

Individual nest trees include large trees, generally over 81 cm (32 inches) dbh, with the presence of potential nest platforms or deformities such as large limbs (greater than 13 cm (5 inches)), broken tops, mistletoe infections, witches brooms, or other formations providing a broad platform. Because marbled murrelets do not build nests, moss or detritus to cushion or hold the egg may be important. Platforms should have overhead cover for protection from predators and weather, which may be provided by overhanging branches, limbs above the nest area, or branches from neighboring trees. Based on current information, Douglas-fir, coastal redwood, western hemlock, western red-cedar, or Sitka spruce are the trees most likely to provide suitable nesting structure.

Nesting habitat includes the forest stand in which the nest trees are contained. Nest stands are defined as contiguous mature and old-growth forest with no separations of greater than 100 meters (330 feet) wide. Nest trees may be scattered throughout the stand or clumped within portions of the contiguous stand. Nest stands in mature forest may contain fewer than one old-growth tree per acre. Regardless of the distribution of nest trees, nesting habitat includes the entire contiguous forest stand with similar height and canopy closure. The forest stand surrounding the nest tree provides protection from predators and climatic factors.

On a landscape basis, the presence of late-successional, mature, and old-growth forests with substantial canopy closure and canopy height of at least one-half the site-potential tree height also contribute to the conservation of the marbled murrelet, even if they do not contain potential nest trees. The site-potential tree height is the average maximum height possible for a tree given the local growing conditions. The presence of these forest stands increases the area predators must search, decreasing predator efficiency. Forests of the general height of the nest stands and in close proximity to the stand reduce edge-associated predation, effects of changes in microclimate associated with abrupt edges, and potential for windthrow during storms.

To be considered as nesting habitat, forest stands must occur at a distance from the marine environment consistent with the flight and energetic capabilities of the marbled murrelet. Based on confirmed detections of marbled murrelets, this distance varies from 84 kilometers (52 miles) in Washington to less than 16 kilometers (10 miles) in parts of California. Flight distances may reflect the energetic capabilities of marbled murrelets and the presence of suitable nesting habitat.

The Service is not proposing to designate marine areas as critical habitat for the marbled murrelet at this time, but will continue to collect information on threats, the need for marine critical habitat, and the potential benefits of designating marine critical habitat.

Criteria for Identifying Critical Habitat

Several qualitative criteria were considered in the selection of specific areas as critical habitat. These criteria are generally similar to criteria used in the development of several recent Federal management proposals, such as the report prepared by the Scientific Panel (Johnson *et al.* 1991) and Alternative 9 (USDA *et al.* 1993a). The following is a description of the criteria considered:

Known Occupied Sites: Proposed critical habitat units include the majority of the known sites occupied by marbled murrelets on Federal lands. However, known occupied sites may represent only a small portion of the population due to the limited coverage of past survey efforts.

Suitable Nesting Habitat: Proposed critical habitat units include areas with current suitable nesting habitat and other primary constituent elements. Approximately 48 percent of the suitable nesting habitat on Federal lands within the range of the species in Washington, Oregon, and California is included in proposed critical habitat. Forests that are not currently suitable, but which are of similar average height and canopy closure, are also important in improving habitat conditions through reduced fragmentation and creation of large contiguous forest stands that reduce the potential for predation. The total amount of land containing the other primary constituent elements is currently unknown.

Distance from Marine Environment: Marbled murrelets forage daily in the marine environment during the nesting season. To allow for foraging opportunities, nesting habitat must be within the flight capabilities and energetic limits of the species. Proposed critical habitat units were selected based on the distance inland of detections in each general area. As stated above, detections range from over 50 miles from the marine environment in Washington to less than 10 miles in some portions of California.

Rangewide Distribution: To reduce the impact of catastrophic losses of habitat or birds and maintain the current distribution of the species, proposed critical habitat units were selected throughout the range of the listed population, where Federal lands were available. With well-distributed critical habitat, the probability of substantial population declines resulting from catastrophic wildfires or storm events is reduced. Maintaining nesting habitat, and therefore local concentrations, throughout the range of the species will reduce potential losses from oil spills or other marine events. Given the intense site fidelity of most alcid species, maintaining rangewide distribution may also provide potential source populations for the recolonization of future habitat.

Large, Contiguous Blocks of Habitat: In response to the problems of fragmentation of suitable habitat, potential increases in predation, and reduced reproductive success, the Service concentrated on selecting proposed critical habitat units in terms of large, contiguous blocks of late-successional, mature, and old-growth forest. To provide large blocks of habitat, the Service concentrated on the Late-Successional Reserve system identified in Alternative 9. Marbled murrelet locations and habitat were considered in the development of these reserves. Where large blocks of Federal reserve areas were not available, but where critical habitat was determined to be important for distribution, smaller Federal reserves were included.

Adequacy of Existing Protection and Management: The Service considered the existing legal status of lands in the decision to propose specific areas as critical habitat. Areas with permanent legal protection, such as congressionally-designated wilderness areas, national parks, and national wildlife refuges, are not proposed.

Results of Applying Criteria

Application of the selection criteria resulted in the proposed designation of many of the Late-Successional Reserves, as described in Alternative 9, on Federal lands within the range of the marbled murrelet in Washington, Oregon, and California.

At this time, only Federal lands are proposed for designation. However, the Forest Ecosystem Management Assessment Team recognized the limited ability of Federal agencies to recover this species on Federal lands. "Although the Forest Ecosystem Management Assessment was designed to address only Federal lands within the range of the northern spotted owl, the marbled murrelet is an example of a species whose life history requirements cannot be accommodated only on Federal lands. The marbled murrelet is a seabird that nests inland and therefore is influenced by both the marine and terrestrial environments. Its nesting range in the three-state area includes land that is south of the range of the northern spotted owl. In addition, several areas that are considered key to the recovery of the marbled murrelet involve private and State lands" (FEMAT Report at IV–151 and IV–152, USDA *et al.* 1993a). For example, the southernmost portion of the range of the marbled murrelet in California, southwest Washington, and northwest Oregon contain little or no Federal lands or habitat capable of supporting marbled murrelets. The Service currently lacks sufficient information to fully identify any specific non-Federal lands essential to the conservation of the species in these and other areas. The Service will continue to gather information on non-Federal land contributions to conservation and through this notice is requesting comments on this subject.

Lands Not Proposed

Not all suitable nesting habitat is included within the proposed critical habitat units. Emphasis has been placed on those areas considered most essential to the species in terms of habitat, distribution, and ownership. That does not mean that lands outside critical habitat are not important to the marbled murrelet. Some Federal lands outside of critical habitat are expected to receive additional protection from the conservation measures proposed in Alternative 9. Some habitat on non-Federal lands receives protection through prohibitions against take of marbled murrelets.

Congressionally-protected Areas

Because they are generally managed as natural ecosystems, congressionally-designated wilderness areas and national parks are expected to protect marbled murrelet habitat from alteration. These areas are not proposed for designation as critical habitat because the management goals are generally adequate to conserve the species. However, not all congressional designations are managed in this manner. For example, national recreation areas may not be managed to maintain older forest habitats. In addition, some national parks and wilderness areas are experiencing internal and external threats (e.g., highway realignments) to marbled murrelet habitat. The Service is continuing to gather information on management goals and potential threats to these types of areas.

Congressionally-protected areas (e.g., wilderness areas and national parks) are rare within the range of the marbled murrelet in Washington, Oregon, and California. Few wilderness areas lie within the flight distance of marbled murrelets from the marine environment, though some of these areas provide crucial contributions to the conservation of the species. A substantial portion of these areas are incapable of producing marbled murrelet nesting habitat because of forest composition, lack of

forest cover, elevation, and other constraints. Therefore, by themselves, congressionally-protected areas are incapable of supporting stable and interactive populations of marbled murrelets.

Wilderness areas and national parks contain approximately 302,000 hectares (747,000 acres) of marbled murrelet nesting habitat, representing 29 percent of the suitable nesting habitat on Federal lands within the range of the marbled murrelet. They contain 46 (8 percent) of the known occupied sites on Federal lands.

Effects of Proposed Designation

This proposal for designation of critical habitat for the marbled murrelet identifies 62 proposed critical habitat units encompassing approximately 1,217,000 hectares (3,005,000 acres) of Federal land based on information available in the Interagency Geographical Information System (GIS) and FEMAT Report (USDA *et al.* 1993a). The Service has identified 28 proposed critical habitat units totaling 471,000 hectares (1,162,000 acres) of Federal land in Washington, 20 proposed critical habitat units totaling 560,000 hectares (1,382,000 acres) of Federal land in Oregon, and 14 proposed critical habitat units totaling 186,000 hectares (460,000 acres) of Federal land in California. State, private, tribal, and other non-Federal lands are not proposed as critical habitat at this time even if they are physically located within the boundaries of a proposed critical habitat unit, and acreage of non-Federal lands is not included in the above figures.

Some small areas of naturally-occurring or human-created non-suitable habitat (i.e., areas that have never been nor will likely ever be marbled murrelet nesting habitat, such as alpine areas, water bodies, serpentine meadows, airports, roads, buildings, and parking lots) are located within the physical boundaries of proposed critical habitat units. Where possible, these areas were not included within the proposed critical habitat boundaries, and acreage totals were adjusted to reflect the exclusion of this non-suitable habitat. However, many of these areas are small and could not be physically identified on the GIS maps. Also, current mapping information does not allow precise identification of the location of primary constituent elements. The Service is continuing to gather information to refine the boundaries of critical habitat units to eliminate areas that do not contain one or more of the primary constituent elements or will remain non-suitable.

Efforts by Federal agencies to survey for marbled murrelets have been concentrated in areas of proposed timber sales or limited research locations. Only a small fraction of the suitable nesting habitat has been surveyed to date, and surveys have not been uniformly spread across the range of the species. Therefore, known occupied sites provide only a partial indication of the actual areas used by the species. The proposed critical habitat includes 449 (78 percent) of the 574 known occupied sites on Federal lands. Congressionally-protected areas include 48 additional occupied sites. Congressionally-protected areas were not included in critical habitat because management is expected to be consistent with the conservation of the marbled murrelet.

The Service does not have specific information on the amount of suitable nesting habitat or habitat containing one or more of the primary constituent elements on non-Federal lands within the species' range, though it is aware through the Forest Ecosystem Management Assessment Team databases of approximately 189 known occupied sites on non-Federal lands. The Service continues to seek information and comments on the location of suitable nesting habitat and occupied sites on non-Federal lands.

Designation of critical habitat would not offer specific direction for managing marbled murrelet nesting habitat nor provide a management or conservation plan for the species. Recovery plans typically provide guidance for conservation, which may include population goals and the identification of areas that may need protection or special management. Recovery plans usually include management recommendations for designated critical habitat. In February 1993, the Service appointed a recovery team to develop a recovery plan for the marbled murrelet. The team plans to have a draft recovery plan available in the spring of 1994. The Service will continue to work closely with the recovery team and will reexamine proposed critical habitat in light of recovery team recommendations.

Section 7—Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of any listed species. A Federal agency must consult with the Service if its proposed action may affect a listed species or critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The jeopardy concept is defined at 50 CFR 402.02 as any action that would be expected to reduce appreciably the likelihood of both the survival and recovery of a species.

Survival and recovery, mentioned in both the definition of adverse modification and jeopardy, are directly related. Survival may be viewed as a linear continuum between recovery and extinction of the species. The closer one is to recovery, the greater the certainty in the species' continued survival. The terms survival and recovery are thus related by the degree of certainty that the species will persist over a given period of time. Factors that influence a species' persistence include population numbers, distribution throughout its range, stochasticity, expected duration, and reproductive success.

The Act's definition of critical habitat indicates that the purpose of critical habitat is to contribute to a species' conservation. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the link between critical habitat and recovery in the Act's definition of critical habitat, the prohibition against destruction or adverse modification of critical habitat should provide for the protection of the critical habitat's ability to contribute to the recovery of the species. Thus, the adverse modification standard may be reached closer to the recovery end of the survival continuum, whereas, the jeopardy standard has been applied nearer to the extinction end of the continuum.

After a proposal of critical habitat, section 7(a)(4) of the Act and implementing regulations (50 CFR

402.10) require Federal agencies to confer with the Service on any action that is likely to result in the destruction or adverse modification of the proposed critical habitat. Conference reports provide advisory conservation recommendations to assist a Federal agency in identifying and resolving conflicts that may be caused by the proposed action.

If an agency requests, and the Service concurs, a formal conference report may be issued. A formal conference report on proposed critical habitat contains an opinion that is prepared in accordance with 50 CFR 402.14 as if the critical habitat were designated, not proposed. Such a formal conference report may be adopted as the biological opinion pursuant to 50 CFR 402.10(d) when the critical habitat is designated, if no significant new information has been brought forward and no changes in the action occur that would alter the content of the opinion.

Examples of Proposed Actions

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. As stated earlier, regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

A wide variety of existing and proposed activities may alter or affect proposed marbled murrelet critical habitat. Examples of such activities include, but are not limited to timber harvest, forest management, salvage activities, limbing or modification of limb structure (e.g., for hazard management), mining and mineral exploration, construction of hydroelectric facilities, road construction and refurbishing, and development. Activities that do not alter forest condition, such as some recreational use and personal-use commodity production (e.g., noncommercial mushroom picking, Christmas tree cutting, rock collection) are unlikely to be affected by the proposed designation.

Activities conducted according to the standards and guidelines for Late-Successional Reserves, as described in Alternative 9 of the DSEIS for the Proposed Northwest Forest Plan would, in most cases, be unlikely to result in the destruction or adverse modification of proposed marbled murrelet critical habitat. Activities in these areas would be limited to manipulation of young forest stands that are not currently marbled murrelet nesting habitat. Also, these manipulations would be conducted in a manner that would not slow the development of these areas into future nesting habitat and should speed the development of some characteristics of older forest.

Economic and Other Impacts

The Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. The Act thus requires the Service to evaluate the economic and other effects likely to result from a designation of critical habitat. Effects attributable to the listing of the species, normal changes in affected industries, or changes in Federal land management that are not caused by the designation are not regarded as effects of the designation of critical habitat. However, due to the complex interplay of economic and other forces, separating impacts associated solely with the designation of critical habitat from other impacts is often difficult.

The proposed critical habitat units for the marbled murrelet coincide with the location of many of the Late-Successional Reserves as described in Option 9 of the FEMAT Report (USDA *et al.* 1993a) and Alternative 9 (USDA *et al.* 1993b). Alternative 9 is identified as the preferred alternative in the DSEIS for the Proposed Northwest Forest Plan. Based on the description of standards for management of and limitations on impacts to marbled murrelet habitat within the Late-Successional Reserves, management of the Reserves under Alternative 9 would be consistent with designating them as critical habitat for the marbled murrelet. Therefore, the economic effects of the designation of Late-Successional Reserves as critical habitat are not likely to exceed those described in the economic analysis of the FEMAT Report (Johnson *et al.* 1993, USDA *et al.* 1993a).

The Service has preliminarily reviewed the possible economic impacts of designating critical habitat for the marbled murrelet on ongoing timber activities. Both the Forest Service and the Bureau of Land Management are currently under court injunctions prohibiting the offering of any new sales until the agencies comply with the National Environmental Policy Act and various forest management legislation. The Proposed Northwest Forest Plan will be presented to the court by April 1994 in an attempt to resolve the court's concerns. Pending that court decision, the only timber available to the timber industry from Federal lands are sold and awarded sales, particularly sales offered under the protection of Section 318. Therefore, the Service proposes to exclude sold and awarded sales from any final critical habitat designation due to economic impacts, both regionally and nationally, due to the limited amount of volume available for Federal harvest. Comments are requested from the public on this aspect of the proposed rule.

The time constraints governing this proposed critical habitat designation did not allow for a more detailed evaluation on the particular areas proposed. Following receipt of comments and information during the public comment period, the Service will conduct additional economic analyses if needed. The Service will further evaluate the economic and other relevant impacts of including or excluding particular areas from a designation of marbled murrelet critical habitat.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, Indian Nations, the scientific community, industry, or any other interested party concerning this proposed rule is hereby solicited. Comments are particularly sought concerning:

(1) The reasons why any Federal lands (either proposed critical habitat or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act, including adaptive management areas under Alternative 9 of the Proposed Northwest Forest Plan;

(2) The location and reasons why any non-Federal lands should or should not be determined to be critical habitat as provided by section 4 of the Act, including potential threats and the

value of any areas to the conservation of the species;

(3) The reasons why any marine areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including information on potential threats, current activities, the effect of current regulatory mechanisms, and benefits to the species;

(4) Current and planned activities in proposed critical habitat areas and their possible impacts on proposed critical habitat;

(5) Any threats to the conservation of the marbled murrelet or the maintenance of marbled murrelet nesting habitat on congressionally-protected lands within the range of the marbled murrelet;

(6) Current and planned activities within congressionally-protected areas that might affect, positively or negatively, the conservation of the marbled murrelet, including any management plans or statutory mandates;

(7) Other physical and biological features that are essential to the conservation of the species and in need of special management or protection;

(8) Specific information on the amount, location, and distribution of suitable marbled murrelet nesting habitat and the numbers and distribution of sites occupied by marbled murrelets on all ownerships and land designations;

(9) Information concerning health of the ecosystems on which the marbled murrelet depends;

(10) Information on the economic benefits and costs that would result from the proposed designation of critical habitat for the marbled murrelet, including the segments of the economy that would be affected by the proposed designation;

(11) Data and information relevant to determining whether the benefits of excluding a particular area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(12) Methods of analysis useful in evaluating economic and other relevant impacts; and

(13) Additional information that should be included in the analysis of economic and other impacts of the proposed designation.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within proposed critical habitat units, it is not clear at this time whether significant economic impacts will result from critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the marbled murrelet in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that critical habitat designation, as proposed, would not pose significant takings implications.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Portland Field Office, 2600 SE 98th Avenue, suite 100, Portland, Oregon 97266, (503) 231-6179.

Authors

The primary authors of this proposed rule are Robin Bown, U.S. Fish and Wildlife Service, Portland Field Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266; Kimberly Flotlin, U.S. Fish and Wildlife Service, Olympia Field Office, 3704 Griffin Lane SE, suite 102, Olympia, Washington 98501; and Mike Horton, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1803, Sacramento, California 95825.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting, and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11(h) [Amended]

2. Section 17.11(h) is amended by revising the "Critical habitat" entry for "Murrelet, marbled" under BIRDS to read "17.95(b)".

3. Section 17.95(b) is amended by adding critical habitat for the marbled murrelet in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife

* * * * *

(b) * * *

MARBLED MURRELET
(*Brachyramphus marmoratus marmoratus*)

For the States of California, Oregon, and Washington, proposed critical habitat units under Federal jurisdiction are depicted on the general configuration maps below. More detailed maps are maintained on file at the U.S. Fish and Wildlife Service, Ecological Services, 911 Northeast 11th Avenue, Portland, Oregon, 97323 (503/231–6131). Copies of the detailed maps are available upon request at the requester's expense.

Dated: January 14, 1994

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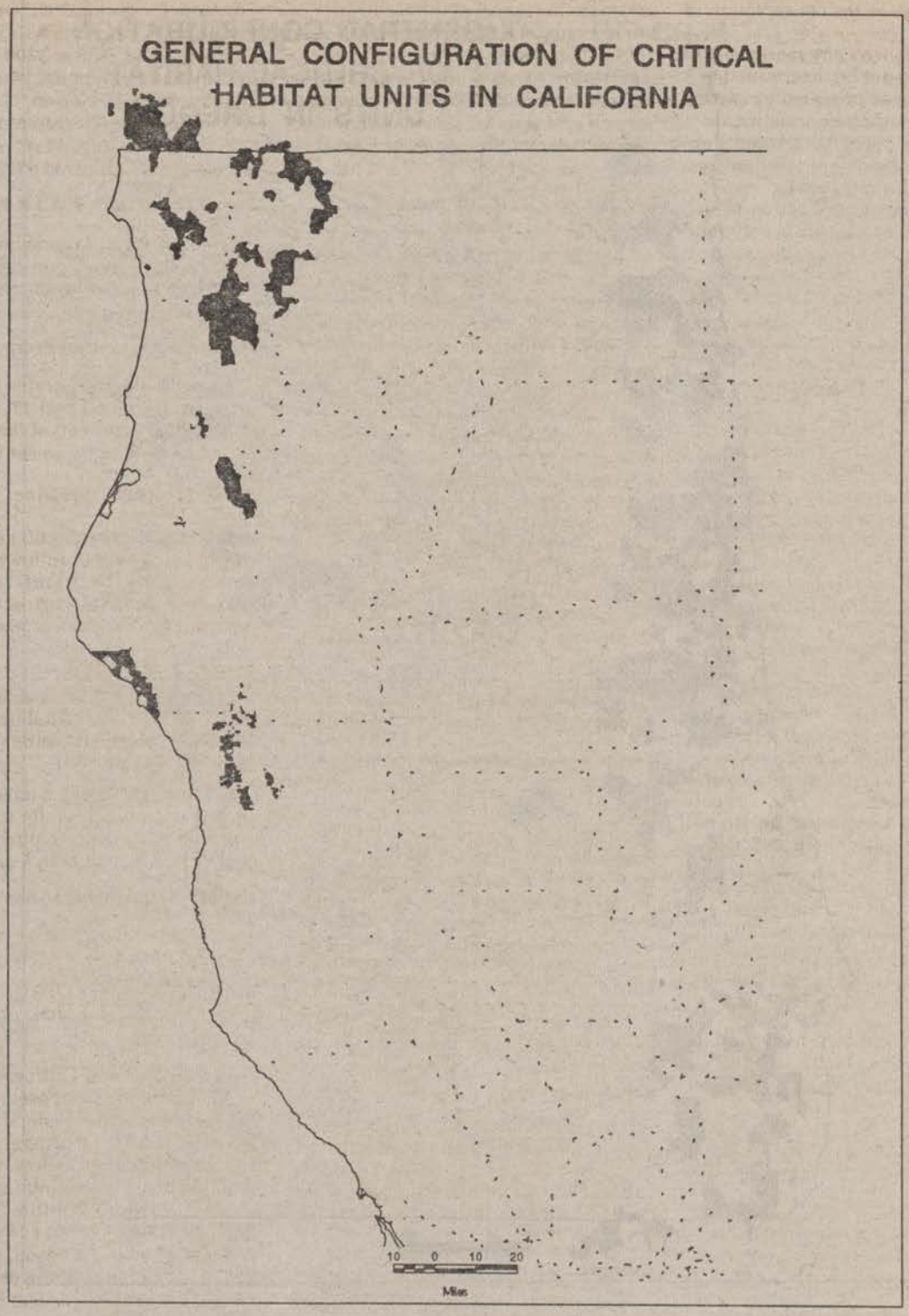
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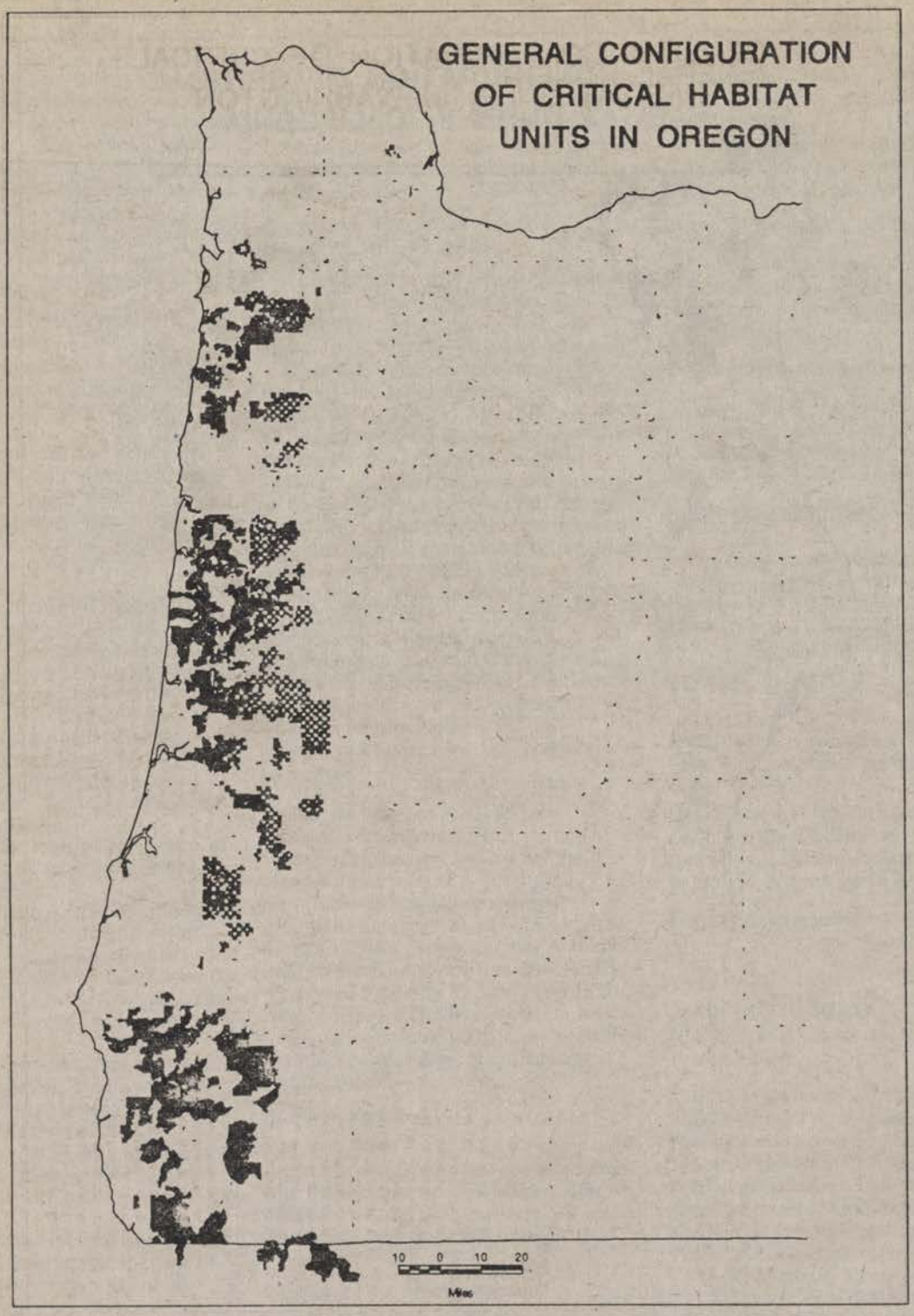
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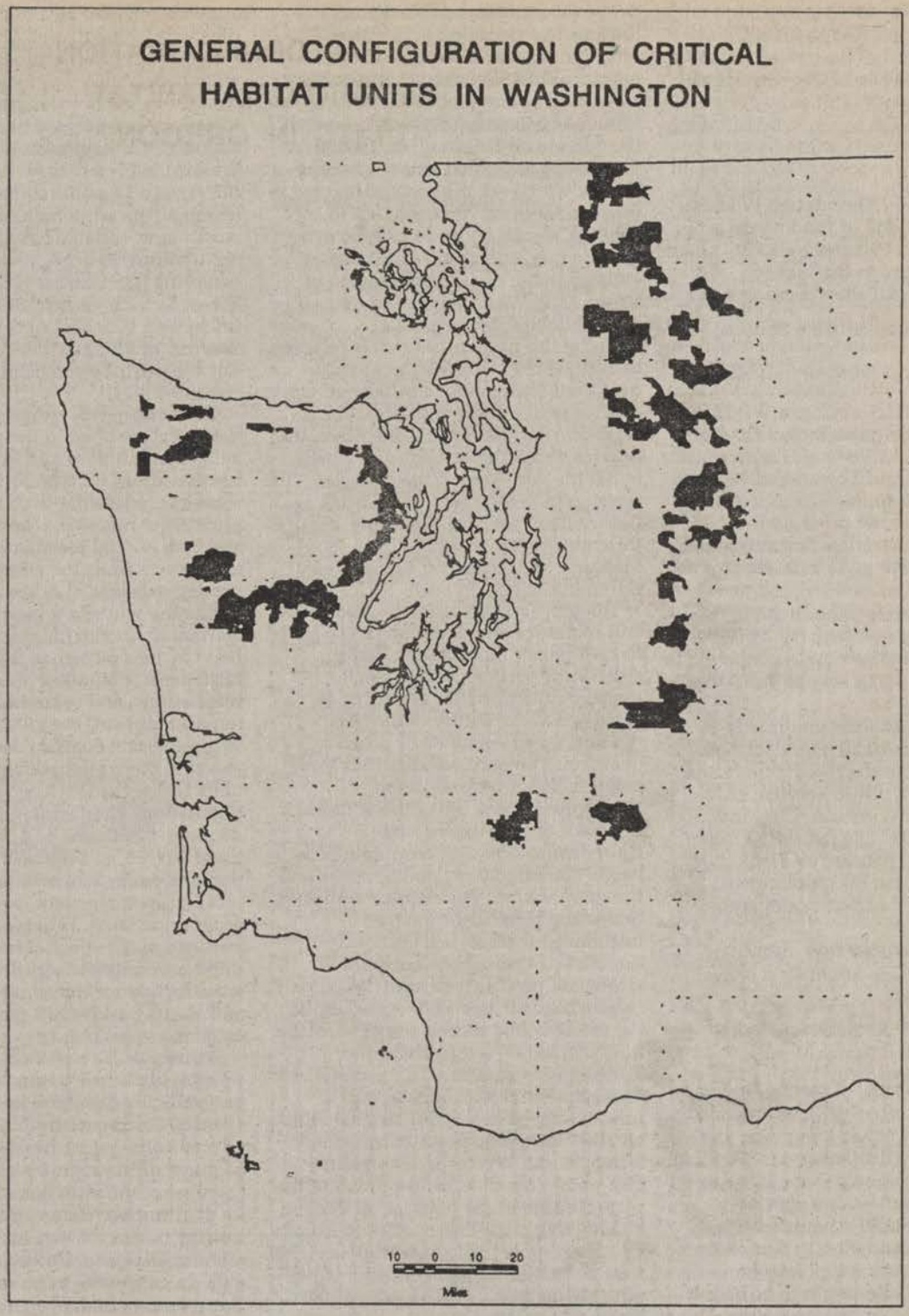

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Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–1704 Filed 01–26–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition to Add Pinus albicaulis (Whitebark Pine) to the List of Threatened and Endangered Species.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that the petitioners have not presented substantial information indicating that listing *Pinus albicaulis* (whitebark pine) may be warranted.

DATES: The finding announced in this notice was made on January 13, 1994. Comments and information concerning this petition finding may be submitted until further notice.

ADDRESSES: Questions, comments, or information concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2617 East Lincolnway, suite A, Cheyenne, Wyoming 82001. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jane P. Roybal (see **ADDRESSES** above) (307/772–2374).

SUPPLEMENTARY INFORMATION

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species.

The Service has made a 90-day finding on a petition to list *Pinus albicaulis* (whitebark pine). The petition, dated February 5, 1991, was submitted by the Great Bear Foundation, Missoula, Montana, and was received by the Service on February 11, 1991. The petitioners requested that the Service list the whitebark pine as endangered in western Montana, northern Idaho, western Wyoming, and northeastern Washington, and as either threatened or endangered in the Cascade region of Oregon and Washington, and that critical habitat be designated.

Under the Act, the Service is required to address the status of plant species over their entire range (unlike vertebrate species where distinct population segments may be listed). Therefore, the Service views the petition as a petition to list the whitebark pine throughout its range, which extends from central California to western Wyoming, north through Oregon, Washington, and Montana to Alberta and British Columbia.

The petitioner submitted information and literature references on the status of the whitebark pine, stating that in significant portions of the species' range, populations are declining so rapidly that the ability of the tree species to regenerate itself is in question. The petition identifies three major factors involved in the "precipitous" decline of the whitebark pine: white pine blister rust (*Cronartium ribicola*), mountain pine beetle (*Dendroctonus ponderosae*), and fire suppression. The petition indicates that white pine blister rust, an introduced disease, has become established throughout most of the whitebark pine's range with "extensive" infestation and mortality occurring in the moist mountain regions of Montana, northern Idaho, Oregon, and the Washington Cascades. The petition also states that mountain pine beetle infestations have had devastating effects on whitebark pine populations in Montana and Wyoming. The petitioner also points out that fire suppression has played a role in the population decline by allowing other tree species to invade whitebark pine habitat and replace it, as well as facilitating the spread of white pine blister rust and mountain pine beetle infestation.

While recent mountain pine beetle infestations have killed most of the mature trees in some areas (Reynolds 1990), infestations appear to reach epidemic levels only where specific conditions exist. Whitebark pine populations have been severely reduced by white pine blister rust in many moist mountain habitats where the climate allows the blister rust to complete its life cycle (Kendall and Arno 1990). However, in drier portions of the whitebark pine's range, climatic conditions are not favorable for infection, and damage due to white pine blister rust is negligible (Charles Wellner, retired U.S. Forest Service, *in litt.*, 1991). Thus, throughout portions of its range, the whitebark pine remains common in suitable habitats and/or populations do not appear to be declining (Dr. Clinton Williams, U.S. Forest Service, *in litt.*, 1991; Chester Buchanan, U.S. Fish and Wildlife Service, *in litt.*, 1991; R.T. Ogilvie, Royal British Columbia Museum, pers. comm., 1992).

The Service has reviewed the petition, the literature cited in the petition, other available literature and information, and has consulted with biologists and researchers familiar with the whitebark pine. After reviewing the best scientific and commercial information available, the Service finds the petition does not present substantial information that listing the whitebark pine may be warranted. In making this finding, the Service does recognize that white pine blister rust, mountain pine beetle infestations, and successional replacement and competition by more shade-tolerant conifers do pose a real threat to the whitebark pine in portions of its range. Some whitebark pine populations have undergone dramatic declines due to one or a combination of these factors, and the degree of population decline may be severe in local or, in some cases, over broad geographic areas. However, in other portions of the species' range, where different climatic conditions exist, these same factors are not stand-threatening, and healthy whitebark pine stands continue to persist.

Whitebark pine is usually restricted to remote, higher elevation areas and generally is not valued as a timber species. Consequently, little inventory or monitoring work has been completed in much of its range. In many areas, there are little or no quantitative data on its distribution, status, or the extent of decline due to the various factors mentioned above. However, available data do not indicate the species may be threatened or endangered throughout a significant portion of its range.

In regard to the petitioner's request that critical habitat be designated for the whitebark pine, the designation of critical habitat is not a petitionable action under the Act.

References Cited

Kendall, K.C. and S.F. Arno. 1990. Whitebark pine—An important but endangered

wildlife resource. Pages 264–273 in Proceedings—Whitebark pine ecosystems: ecology and management of a high-mountain resource. USDA, U.S. Forest Service, Intermtn. Res. Sta., General Tech. Report INT–270.

Reynolds, Frances. 1990. Whitebark pine ecosystems; the threats and the challenge. In Forestry Research West, USDA, U.S. Forest Service. 3pp.

Author

This notice was prepared by Jane P. Roybal (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 13, 1994.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–1701 Filed 1–26–94; 8:45 am]

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50 CFR Part 17

RIN 1018–AC25

Endangered and Threatened Wildlife and Plants; Proposal to List the Spruce-Fir Moss Spider as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the spruce-fir moss spider (*Microhexura montivaga*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). This spider is currently known from four mostly small populations located in western North Carolina and eastern Tennessee. The spider's damp high-elevation forest habitat is deteriorating rapidly due primarily to air pollution and exotic insects. The species' current low numbers also increase its vulnerability to harm from other threats. Listing *Microhexura montivaga* as an endangered species would provide protection under the Act.

DATES: Comments from all interested parties must be received by March 28, 1994. Public hearing requests must be received by March 14, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell at the above address (telephone 704/665–1195, Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

The spruce-fir moss spider was originally described by Crosby and Bishop (1925) based on collections made from a site in western North Carolina in 1923 (Coyle 1981). Only a few specimens were taken, and little was known about the species until its rediscovery approximately 50 years later by Dr. Frederick Coyle (Western Carolina University, Cullowhee, North Carolina) and Dr. William Shear (Hampden-Sydney College, Hampden-Sydney, Virginia) (Coyle 1981). *Microhexura montivaga* is one of only two species belonging to the genus *Microhexura* in the family *Dipluridae* (Coyle 1981; Harp 1991, 1992). The other species in the genus, *M. idahoana*, occurs only in the Pacific Northwest (Coyle 1981). Diplurids belong in the primitive suborder *Mygalomorphae*, which are often popularly referred to as "tarantulas" (Harp 1991, 1992). The genus *Microhexura* is the northernmost representative of the family *Dipluridae* and is also one of the smallest of the mygalomorph spiders, with adults measuring only 3.0 to 5.6 millimeters (roughly ¼ to 7/16 inch) (Coyle 1981). Coloration of *M. montivaga* ranges from light brown to a darker reddish brown, and there are no markings on the abdomen (Harp 1992). The carapace is generally yellowish brown (Harp 1992). The most reliable field identification characteristics for the spruce-fir moss spider are a pair of very long posterior spinnerets and the presence of a second pair of book lungs, which appear as light patches posterior to the genital furrow (Harp 1992).

The typical habitat of the spruce-fir moss spider is found in well-drained moss (and liverwort) mats growing on rocks or boulders, in well-shaded situations in mature, high-elevation Fraser fir (*Abies fraseri*) and red spruce (*Picea rubens*) forests (Coyle 1981, Harp 1992). The moss mats cannot be too dry (the species is very sensitive to desiccation) or too wet (large drops of water can also pose a threat to the spider) (Harp 1992). The spider constructs its tube-shaped webs in the interface between the moss mat and rock surface (Coyle 1981, Harp 1992), though occasionally the web extends into the interior of the moss mat (Harp 1992). The tubes are thin-walled and typically broad and flattened with short side branches (Coyle 1981, Harp 1992). There is no record of prey having been found in the webs of the spruce-fir moss spider nor has the species been observed taking prey in the wild, but the abundant springtails (collembolans) in the moss mats provide the most likely source of food for the spider (Coyle 1981, Harp 1992).

Males of the species mature during September and October, and females are known to lay eggs in June. The egg sac is thin-walled and nearly transparent, and it may contain seven to nine eggs. The female remains with the egg sac and, if disturbed, will carry the egg sac with her fangs. Spiderlings emerge in September (Coyle 1981). The means of dispersal of the spiderlings from the parental moss mat is not known, but "ballooning," a process by which the spiders use a sheet of silk played out into the wind to carry them into the air, has been suggested as a possible means of long-range dispersal (Harp 1992). The life span of the species is also unknown, but Coyle (1981) estimated that it may take 4 years for the species to reach maturity.

From 1989 through 1992, status surveys were conducted for the spruce-fir moss spider (Harp 1991, 1992). Based on the results of these surveys, the spider is presently known to exist at only four locations—three sites in North Carolina and one in Tennessee. Of the four remaining populations, only one appears to be relatively stable. This population is located along the Avery/Caldwell County line in North Carolina. The other two populations in North Carolina are located in Swain County. Both of these Swain County populations are extremely small, with only one spruce-fir moss spider having been found at each of these two sites in recent years (Harp 1991, 1992). The spruce-fir forests at these two Swain County sites are rapidly declining. The Tennessee population is located in Sevier County. This population was considered healthy in 1989 but is currently believed to be declining in numbers and is endangered by habitat loss/alteration (Harp 1992). The high-elevation spruce-fir forests throughout much of the species' historic range are being decimated by the balsam wooly adelgid (*Adelges piceae*), an exotic insect pest, and possibly by air pollution (acid precipitation) and other factors not yet fully understood. The death and thinning of the forest canopy results in locally drastic changes in microclimate, including increased temperatures and decreased moisture

leading to desiccation of the moss mats on which the spruce-fir moss spider, and possibly its prey base, depend for survival.

The spruce-fir moss spider is not included in the Service's notice of review for animal candidates published in the **Federal Register** of November 21, 1991 (56 FR 58804). However, because of concerns expressed by some individuals for the spider's status, the Service contracted in 1990 for a survey of both historic and potential habitat of the species. The results of the survey, which was completed in 1992, indicate that the spider is undergoing a rapid decline in distribution. Presently only one relatively stable population is known to survive, and while currently considered to be healthy, this population is potentially threatened by the same factors that are believed to have resulted in the decline and/or extirpation of the species elsewhere within its historic range.

Species appearing in the candidate notices of review are assigned to either category 1, 2 or 3. In conjunction with the current proposed rule, the Service has approved the spruce-fir moss spider as a category 1 candidate. Category 1 represents those species for which the Service has enough substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

The Service has met and been in contact with various Federal and State agency personnel and private individuals knowledgeable about the species concerning its status and the need for the protection provided by the Act. On December 31, 1992, the Service notified appropriate Federal, State, and local government agencies and landowners, in writing, that a status review was being conducted and that the species might be proposed for Federal listing. A total of ten written comments were received. The National Park Service, the North Carolina Division of Parks and Recreation, and three private individuals (including the owner of the site containing the Avery/Caldwell County, North Carolina, population) expressed strong support for the potential listing of the spruce-fir moss spider as an endangered species. The U.S. Soil Conservation Service, Tennessee Wildlife Resources Agency, Tennessee Department of Environment and Conservation, Tennessee Valley Authority, and the North Carolina Department of Agriculture stated that they had no new or additional information on the species or threats to its continued existence. No negative comments were received.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the spruce-fir moss spider (*Microhexura montivaga*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The spruce-fir moss spider is known to be endemic only to high-elevation spruce-fir forests of western North Carolina and eastern Tennessee. Historically, the species has been reported from four sites in North Carolina and one in Tennessee. In North Carolina the species has been recorded from two sites in Swain County, one in Yancey County, and one in Avery and Caldwell Counties (Coyle 1981, Harp 1992). In Tennessee, the species is known from only one site in Sevier County (Coyle 1981).

During 1989 and through 1992, both historic and potential habitat of the species was surveyed (Harp 1991, 1992). No new populations of the spruce-fir moss spider were discovered, and of the five previously recorded populations, only one—the Avery and Caldwell County, North Carolina, population—appears to be stable (Harp 1992).

The Yancey County, North Carolina, population appears to have been extirpated, and only a single individual could be found at each of the two sites in Swain County, North Carolina (Harp 1992). The population in Sevier County, Tennessee, was surveyed in 1989 and was considered to be relatively healthy at that time (Harp 1991). However, revisits to this site in 1992 indicated the population level is declining, apparently in conjunction with a rapid decline in the forest canopy occurring at the site and associated desiccation of moss-mat habitat (Harp 1992).

The spruce-fir moss spider is very sensitive to desiccation and requires situations of high and constant humidity (Coyle 1981; Harp 1991, 1992). Loss of forest canopy leading to increased light and decreased moisture on the forest floor (resulting in desiccation of the moss mats) appears to be the major cause for the loss and decline of the spruce-fir moss spider at all four of these sites and the major threat to the species' continued existence. In a 1991 letter to Keith Langdon (National Park Service, Great Smoky Mountains National Park), Dr. Frederick Coyle (Western Carolina University) indicated that the spruce-fir moss spider was common at one of the sites in Swain County, North Carolina, as late as 1983 but was extremely rare by 1988. In his letter to Keith Langdon, Dr. Coyle stated that many of the moss mats at this site had become dry and loose, which he suspected was due largely to deterioration of the forest canopy at the site. Fraser firs at all four of these sites (the Swain and Yancey County sites in North Carolina and the Sevier County, Tennessee, site) have suffered extensive mortality, believed to be primarily due to infestation by the balsam wooly adelgid (J. Harp, Oak Ridge National Laboratory, personal communication, 1993), a nonnative insect pest believed to have been introduced into the United States from Europe (Eager 1984).

Atmospheric deposition of pollutants, primarily affecting the red spruce (Harp 1992), may also be a major factor (either directly or indirectly) in the decline of the forest canopy at these sites. It has been estimated that the red spruce at the site in Yancey County, North Carolina, where the species is now believed to be extirpated, have lost 75 to 90 percent of their foliage (Krahl-Urban et al. 1988), possibly due to acid precipitation. The death and thinning of the canopy trees within these stands also cause the remaining trees to be more susceptible to wind and other storm damage, which has become a major concern at the Sevier County, Tennessee, site (J. Harp, personal communication 1992).

The spruce-fir forest at the site harboring the Avery/Caldwell County, North Carolina, population of the spruce-fir moss spider has not experienced the degree of decline that has occurred (and is occurring) at the other sites known to support (or to have supported) populations of the spider. However, the same factors that are believed to have resulted in the decline of the spruce-fir forest and the associated loss of suitable moss-mat habitat at these other sites potentially threaten this population and its habitat at this site as well.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The spruce-fir moss spider is not currently known to be commercially valuable; however, because of its extreme rarity and uniqueness, it is conceivable that it could be sought by collectors. It is one of only two members

of the genus *Microhexura*, it is the only representative of the primitive family *Dipluridae* in eastern North America, and it is one of the smallest of the world's "tarantulas." While collecting or other intentional take is not presently identified as a factor contributing to the species' decline, the low numbers, slow reproductive rate, and extremely restricted range of the spruce-fir moss spider make it unlikely that the species could withstand even moderate collecting pressure.

C. Disease or Predation

It is presently unknown whether disease or predation have played a role in the decline of the spruce-fir moss spider. Further research is needed in this area. While predation is not thought to be a significant threat to a healthy population of the spruce-fir moss spider, it could limit the recovery of the species or contribute to the local extirpation of populations already depleted by other factors. Possible predators of the spruce-fir moss spider include pseudoscorpions, centipedes, and other spiders (Harp 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

Neither the State of North Carolina nor the State of Tennessee include arachnids on their lists of endangered and threatened species; therefore, the species is unprotected in both States. Federal listing would provide protection for the spruce-fir moss spider throughout its range by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when activities they fund, authorize, or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Only one of the four remaining populations of this species appears stable. The other three surviving populations are extremely small, and all four populations are geographically isolated from one another. Therefore, the long-term genetic viability of these populations is in doubt. Also, the restricted range of each of the surviving populations makes them extremely vulnerable to extirpation from a single event or activity, such as a severe storm, fire, land-clearing or timbering operation, pesticide/herbicide application, etc. Because they are isolated from one another, natural repopulation of an extirpated population would be unlikely without human intervention.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the spruce-fir moss spider (*Microhexura montivaga*) as an endangered species. The species has been greatly reduced in numbers throughout the majority of its historic range and presently is known to occur at only four locations. At two of these locations, only lone individuals—one at each location—have been observed in recent years; at a third location the species has undergone a rapid decline in numbers and is endangered by further habitat degradation/alteration. Only one of the remaining populations appears to be stable at this time, and it is potentially threatened by many of the same factors that are believed to have resulted in the extirpation or decline of the other historically known populations. Due to the species' history of population loss and decline and the extreme vulnerability of the surviving populations, endangered status appears to be appropriate for this species. Critical habitat is not being proposed for this species at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose any habitat of a species that is considered to be critical at the time the species is proposed to be endangered or threatened. The Service's regulations [50 CFR 424.12(a)(1)] state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to the spruce-fir moss spider, and designation of critical habitat could further threaten the species.

Section 7 of the Endangered Species Act requires that Federal agencies insure that their actions are not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat. (See the "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the spider's general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects be proposed in areas inhabited by the spruce-fir moss spider, the involved Federal agency will already have the general distribution data needed to determine if the species may be impacted by their action. If needed, more specific distribution information would be provided.

Three of the four surviving populations of the spruce fir moss spider are considered to be extremely small, and suitable habitat at each of the four sites still supporting the species is very limited. The precarious status of the species means that any Federal action with the potential to result in significant adverse modification or destruction of the species' habitat would also likely jeopardize its continued existence. Under these conditions, no additional protection for the spruce-fir moss spider would accrue from critical habitat designation that would not also accrue from listing the species. Consequently, when listed, habitat protection for the spruce-fir moss spider will be accomplished through the Section 7 jeopardy standard and Section 9 prohibitions against take.

In addition, the spruce-fir moss spider is very rare and unique, and taking for scientific purposes and private collection could pose a threat if specific site information was released. The publication of critical habitat maps in the **Federal Register**, local newspapers, and other publicity accompanying critical habitat designation could increase the collection threat. The locations of populations of these species have consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local government agencies from the Service office described in the "ADDRESSES" section; from the Service's Raleigh Field Office, P.O. Box 33726, Raleigh, North Carolina 27636–3726; the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501; and from the North Carolina Wildlife Resources Agency, North Carolina Natural Heritage Program, Tennessee Wildlife Resources Agency, and Tennessee Department of Environment and Conservation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and

prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. The Service has notified Federal agencies that may have programs which could affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or issuance of permits for construction, recreation or development actions that could result in the loss or thinning of the high-elevation forest canopy, and pesticide or herbicide applications for the control of noxious insects or weeds. It has been the experience of the Service, however, that nearly all Section 7 consultations have been resolved so that the species has been protected and the project objectives have been met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve any undue economic hardship that would be suffered if such relief were not available. Such permits are not expected for the spruce-fir moss spider since the species is not in trade.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on the spruce-fir moss spider will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Coyle, F. A. 1981. The Mygalomorph Genus *Microhexura* (*Araneae, Dipluridae*). Bull. Amer. Mus. Nat. Hist. 170:64–75.

Crosby, C. R., and S. C. Bishop. 1925. Two New Spiders From the Blue Ridge Mountains of North Carolina (*Araneina*). Ent. News. 36:142–146, Figures 1 and 2.

Eager, C. 1984. Review of the Biology and Ecology of the Balsam Wooly Aphid in Southern Appalachian Spruce-fir Forests. IN: P.S. White (ed.), The Southern Appalachian Spruce-Fir Ecosystem: Its Biology and Threats. Research/Resources Management Report SER–71. U.S. Dept. of Interior, National Park Service.

Harp, J. M. 1991. Status of the Spruce-fir Moss Spider, *Microhexura montivaga* Crosby and Bishop, in the Great Smoky Mountains National Park. Unpubl. report to the National Park Service, U.S. Department of the Interior. 12 pp. plus appendix.

_____. 1992. A Status Survey of the Spruce-fir Moss Spider, *Microhexura montivaga* Crosby and Bishop (*Araneae, Dipluridae*). Unpubl. report to the North Carolina Wildlife Resources Commission, Nongame and Endangered Wildlife Program, and the U.S. Fish and Wildlife Service, Asheville, North Carolina. 30 pp.

Krahl-Urban, B., H.E. Papke, K. Peters, and C. Shimanski. 1988. Forest Decline. U.S. Environmental Protection Agency and German Ministry of Research and Technology, 137 pp.

Author

The primary author of this proposed rule is John A. Fridell, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 225).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.11(h) is amended by adding the following, in alphabetical order, under ARACHNIDS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
ARACHNIDS							
*	*	*	*		*	*	*
Spider, spruce-fir moss.	*Microhexura montivaga.*	U.S.A. (NC, TN) ..	NA	E	.....	NA	NA
*	*	*	*		*	*	*

Dated: November 23, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–1700 Filed 1–26–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

Endangered and Threatened Species; Delta Smelt and Sacramento Splittail; Water Quality Standards for Sacramento River, San Joaquin River, and San Francisco Bay and Delta

AGENCIES: Environmental Protection Agency and Fish and Wildlife Service, Interior.

ACTION: Proposed rules; notice of public hearings and extension of public comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), and the Environmental Protection Agency (EPA), under section 303 of the Clean Water Act, give notice that joint public hearings will be held in California for the revised proposed critical habitat determination for the delta smelt (*Hypomesus transpacificus*), the proposed threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*), and the proposed water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta, California. The comment periods for the Service's proposed rules for the delta smelt and the Sacramento splittail will be extended.

DATES: The comment period for the Service's proposals is extended until March 11, 1994. EPA's closing date for public comments remains March 11, 1994. Four joint public hearings for the three proposals will be held on the following dates: (1) February 23, 1994, from 1 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. in Fresno, California; (2) February 24, 1994, from 1 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. in Sacramento, California; (3) February 25, 1994, from 3 p.m. to 7 p.m. in San Francisco, California; and (4) February 28, 1994, from 9 a.m. to 12 noon and from 6 p.m. to 8 p.m. in Irvine, California.

ADDRESSES: The joint Fish and Wildlife Service and Environmental Protection Agency public hearings will be held at the following locations: (1) Holiday Inn Center Plaza, 2233 Ventura Avenue, Fresno, California; (2) Expo Inn, 1413 Howe Avenue, Sacramento, California; (3) EPA Regional Office, 75 Hawthorne Street, San Francisco, California; and (4) City of Irvine City Hall, 1 Civic Center Plaza, Irvine, California.

Written comments and materials relating to proposed Service actions should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Written comments and materials relating to the proposed EPA action should be sent directly to the Bay/Delta Program Manager, Water Quality Standards Branch, W–3, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above addresses.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section) at 916/978– 4613 or Susan Hatfield, Environmental Protection Agency (see **ADDRESSES** section) at 415/744–1991.

SUPPLEMENTARY INFORMATION:

Background

The three proposals being addressed at the public hearings are components of a coordinated Federal interagency initiative responding to water management issues in the San Francisco Bay and Delta. EPA and the Service are working closely together and with the National Marine Fisheries Service and the U.S. Bureau of Reclamation to develop a comprehensive, habitat-oriented approach to water and fish and wildlife resource management issues in California.

Critical habitat designation for the federally listed threatened delta smelt would provide additional protection under section 7 of the Act with regard to activities that require Federal agency action. As required by section 4 of the Act, the Service will consider economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

Sacramento splittail occur in Suisun Bay and the San Francisco Bay-Sacramento-San Joaquin River Estuary in California. The Sacramento splittail has declined by 62 percent over the last 15 years. This species is primarily threatened by large freshwater exports from Sacramento and San Joaquin River diversions, prolonged drought, loss of shallow water habitat, introduced aquatic species, and agricultural and industrial chemicals.

EPA has proposed a rule to establish three sets of Federal criteria to protect the designated uses of the San Francisco Bay-Sacramento-San Joaquin Delta Estuary. The three sets include: (1) Salinity criteria protecting the estuarine habitat and other designated fish and wildlife uses; (2) salinity criteria (measured in electrical conductivity) to protect the fish spawning (striped bass) designated use in the lower San Joaquin River; and (3) salmon smolt survival index criteria to protect the fish migration and cold freshwater habitat designated uses in the estuary.

The hearings and the extension of the comment periods will allow all interested parties to submit oral or written comments on the three related proposals. The three proposed rules were published in the **Federal Register** on January 6, 1994 (delta smelt (59 FR 852), Sacramento splittail (59 FR 862), and EPA water quality standards (59 FR 810)).

In the January 6, 1994, **Federal Register** notice for the proposed water quality standards, EPA published its intent to hold public hearings during the week of February 21, 1994, in Fresno, California; Sacramento, California; and San Francisco, California. After further consideration, it was decided to add a fourth hearing in the Los Angeles, California area in order to expand the public's opportunity to comment on these proposals.

Subsection 4(b)(5)(E) of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service hold a public hearing, if it is requested within 45 days of the publication of a proposed rule. In anticipation of public hearing requests, the Service announces a joint effort with EPA to hold four public hearings in California on three related components of an interagency plan that addresses management of water and fish and wildlife resources in the California estuary.

The Service and EPA have jointly scheduled four public hearings: (1) February 23, 1994, from 1 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. at the Holiday Inn Center Plaza, 2233 Ventura Avenue, Fresno, California; (2) February 24, 1994, from 1 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. at the Expo Inn, 1413 Howe Avenue, Sacramento, California; (3) February 25, 1994, from 3 p.m. to 7 p.m. at the EPA Regional Office, 75 Hawthorne Street, San Francisco, California; and (4) February 28, 1994, from 9 a.m. to 12 noon and from 6 p.m. to 8 p.m. at the Irvine City Hall, 1 Civic Center Plaza, Irvine, California.

Those parties wishing to make statements for the record should bring copies of their statements to present to EPA and the Service at the start of the hearings. Oral statements may be limited in length if the number of parties present at the hearings necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the respective agencies. Written comments carry the same weight as oral comments.

EPA's January 6, 1994, notice set the due date for all written comments related to their proposed rule for March 11, 1994. The comment periods on the two Service proposed rules are extended to March 11, 1994. Written comments should be submitted to EPA or the Service at their respective offices given above in the **ADDRESSES** section.

Author

The primary author of this notice is Jackie Campbell, U.S. Fish and Wildlife Service, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (503/231-6131).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 14, 1994.

Marvin L. Plenert,

Regional Director, Region 1, Fish and Wildlife Service.

Dated: January 13, 1994.

Carl C. Kohnert, Jr.,

Acting Regional Administrator, Region IX, Environmental Protection Agency.

[FR Doc. 94-1539 Filed 1-26-94; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Ohlone Tiger Beetle as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and commencement of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Ohlone tiger beetle (*Cicindela ohlone*) pursuant to the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that the requested action may be warranted for this species. Through issuance of this document, the Service now requests additional data and comments from the public regarding the status of the Ohlone tiger beetle.

DATES: The finding announced in this document was made on January 19, 1994. Comments and materials related to this petition finding may be submitted until further notice. Comments and materials should be submitted at the earliest possible date to ensure their use in the final decision.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species should be submitted to the Field Supervisor, Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Hohman at the Ventura Field Office (see **ADDRESSES** section) or at 805/644-1766.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Section 4(b)(3)(B) of the Act further requires the Service to make a finding as to whether or not the petitioned action is warranted within 1 year of receipt of a petition that presents substantial information.

On February 18, 1993, the Service received a petition from Mr. Randall Morgan to list the Ohlone tiger beetle as an endangered species under the Act. The petition was dated February 12, 1993. A letter acknowledging receipt of the petition was mailed to the petitioner on March 30, 1993.

The finding is based on the species' description (Freitag *et al.* 1993), other published literature, agency documents and reports, and field sightings. Interviews were conducted with entomologists familiar with the biology of tiger beetles, with planners, and with others who are knowledgeable about proposed projects that may negatively affect the Ohlone tiger beetle. All documents and records of telephone conversations upon which this finding is based are on file at the Ventura Field Office (see **ADDRESSES** section).

The Ohlone tiger beetle's adult morphology, geographic distribution, habitat distribution (both historic and current), phenology, phylogenetic relationships, and distinguishing features, as well as concerns for its future, were described by Freitag *et al.* (1993). Species determination was based on external morphological characteristics, especially male and female genitalia, and phenology.

The larvae of *Cicindela ohlone* have not been found; therefore, information on their life history requirements is unknown. In general, however, the larvae of other members of the genus *Cicindela* construct burrows that are usually perpendicular to the soil surface (Kaulbars and Freitag 1993). Development of tiger beetle larvae takes approximately 2 years (Lindroth 1974).

The Ohlone tiger beetle is known from only four locations in Santa Cruz County, California: (1) The west side of the city of Santa Cruz, (2) Soquel (the type locality) (Kavanaugh, *in litt.*, 1992), (3) upper or north campus of the University of California at Santa Cruz, and (4) city of Scotts Valley (Morgan, *in litt.*, 1993; Freitag *et al.* 1993; R. Morgan, pers. comm., 1993). All locations are within an approximate range of 16 square miles. There are six other locations with suitable habitat where the Ohlone tiger beetle may occur in Santa Cruz County. One is at another site at the north campus of the University of California at Santa Cruz; a second location is at Pogonip Open Space Preserve adjacent to the University of California; a third area is in Soquel near the type locality; and a fourth is at another site in Scotts Valley. The remaining two locations are northwest of Cabrillo College and near Seascape (Morgan, *in litt.*, 1993). Additional sites in Santa Cruz County appear to have suitable habitat for the species, but survey results yielded no Ohlone tiger beetles in 1991 or 1992.

The habitat for the adult Ohlone tiger beetle consists of coastal terraces with remnant stands of open native grassland containing *Stipa pulchra* (purple needlegrass), *Danthonia californica* (California oat grass), *Perideridia gairdneri* (Gairdner's yampa), and/or *Perideridia kelloggii* (Kellogg's yampa) (Morgan, *in litt.*, 1992; Freitag *et al.* 1993). Soils at these level or nearly level sites are shallow, poorly-drained pale clay or sandy clay soils over bedrock of Santa Cruz Mudstone (Freitag *et al.* 1993).

Adult tiger beetles generally occupy sun-exposed or open areas within their habitat to thermoregulate (Lindroth 1974, Knisley *et al.* 1990). Suggested microhabitat for the larval form of the Ohlone tiger beetle is the same native grassland habitat used by adults but in areas where the vegetation is taller and denser (Freitag *et al.* 1993).

Of about 20,000 acres of pristine and disturbed grassland habitat remaining in Santa Cruz County, only 200 to 300 acres contain the right combination of substrate, slope, and exposure to be deemed suitable habitat for the Ohlone tiger beetle (Morgan, *in litt.*, 1992; Freitag *et al.* 1993). This habitat is currently limited to small disjunct areas near the coast in central Santa Cruz County.

The habitat type for this species was once more widespread and almost contiguous, ranging from the just west of the city of Santa Cruz east along the coast and near-coastal areas to Seascape (Freitag *et al.* 1993; Morgan, *in litt.*, 1993). This area has been developed for residential, commercial, and agricultural use and includes the communities of Santa Cruz, Capitola, and Live Oak. In adjacent Monterey County, these clay-based marine terrace grasslands have already been urbanized (Freitag *et al.* 1993). Limited suitable habitat may occur at low and mid-elevation coastal areas southwest of the Santa Cruz Mountains in extreme southwestern San Mateo County (Freitag *et al.* 1993).

Of the four areas where the Ohlone tiger beetle has been documented, two are threatened by proposed residential development (Freitag *et al.* 1993; Morgan, *in litt.*, 1993). At a third site, adult tiger beetles have been killed by bicycle traffic along a trail where the adult beetles congregate. The University of California also plans to expand and construct university housing in habitat of the Ohlone tiger beetle (Chris Aldecoa, University of California, Santa Cruz, pers. comm., 1993). At the Soquel site, preliminary biological studies on vegetation have been completed for a proposed residential development (Morgan, *in litt.*, 1992). This site and another near Pogonip Open Space Preserve are threatened by non-native *Eucalyptus* sp. and *Cytisus monspessulanus* (French broom) (Morgan, *in litt.*, 1992). These non-native plants convert sunny, open grassland habitat needed by adult Ohlone tiger beetles to habitat dominated by a woody overstory that would shade the grasses and eliminate areas necessary for thermoregulation.

The Ohlone tiger beetle is not currently protected by any regulatory mechanism. The California Endangered Species Act does not apply to insects. The available information suggests that the species' restricted range and small population size increase the chance of extirpation resulting from stochastic (i.e., random) or localized events, such as rock slides, erosion, disease, or predation.

The petition and supporting information have been reviewed by staff at the Ventura Field Office and the Portland Regional Office of the Service. The Service finds that the petition presents substantial information indicating that listing the Ohlone tiger beetle may be warranted. The Service requests any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Ohlone tiger beetle. Of particular interest is information regarding:

(1) The existence and status of additional populations;

(2) Environmental factors determining distribution, including specific habitat needs;

(3) Early life history; and

(4) The response of populations to disturbances such as fire, clearing, or mowing.

This decision is based on information contained in the petition and scientific and commercial information otherwise available to the Service at this time.

References Cited

Freitag, R., D.H. Kavanaugh, and R. Morgan. 1993. A new species of *Cicindela* (*Cicindela*) (Coleoptera: Carabidae: Cicindelini) from remnant native grassland in Santa Cruz County, California. Coleopterists' Bulletin 47(2):113–120.

Kaulbars, M.M., and R. Freitag. 1993. Geographical variation, classification, reconstructed phylogeny, and geographical history of the *Cicindela sexguttata* group (Coleoptera: Cicindelidae). The Canadian Entomologist 125(2):267–316.

Knisley, C.B., T.D. Schultz, and T.H. Hasewinkel. 1990. Seasonal activity and thermoregulatory behavior of *Cicindela patruela*. Annals of the Entomological Society of America. Vol. 83, no. 5, pages 911–915.

Lindroth, C. 1974. Handbooks for the identification of British insects; Coleoptera Carabidae. Volume IV, part 2. Royal Entomological Society of London. 148 pp.

Author

This document was prepared by Judy Hohman of the Ventura Field Office (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 19, 1994.

Russell D. Earnest,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–1703 Filed 1–26–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 23

Species Being Considered for Changes to the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animal and plant species, which are listed in the appendices of this treaty. The United States, as a Party to CITES, may propose amendments to the appendices for consideration by the other Parties.

This notice invites comments and information from the public on species that have been identified as candidates for U.S. proposals to amend Appendix I or II at the next biennial meeting of Party countries.

DATES: The Service will consider all comments received by March 14, 1994, on proposals described in this notice.

The ninth meeting of the Conference of the Parties to CITES (COP9) is scheduled for November 7–18, 1994, in Fort Lauderdale, Florida.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; room 725, Arlington Square Building; U.S. Fish and Wildlife Service; Washington, DC 20240. Fax number (703) 358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone (703) 358–1708.

SUPPLEMENTARY INFORMATION: In its previous notice on this subject (58 FR 38112; July 15, 1993), the U.S. Fish and Wildlife Service (Service) requested information on plant and animal species that might lead the Service to prepare proposals to amend the CITES appendices for consideration at the upcoming ninth meeting of the Conference of the Parties. That notice described the provisions of CITES for listing species in the appendices and set forth information requirements for proposals. The present notice announces the proposals received, explains why the Service does not intend to consider certain proposals, and describes those proposals that will receive further consideration prior to a decision as to whether to submit any of these proposals to the CITES Secretariat by the June 10, 1994, deadline.

The Service received proposals from the Environmental Investigation Agency (EIA), the Fauna and Flora Preservation Society (FFPS), ICCAT Watch (a coalition consisting of the Center for Marine Conservation, the National Audubon Society, and World Wildlife Fund-US), the Natural Resources Defense Council, and the Oregon Natural Resources Council, by September 28, 1993. These organizations proposed adding or transferring nine different taxa, and in addition, EIA proposed transferring all bird species listed in Appendix III to Appendix II. In addition, the Service is considering the development of certain other proposals.

The Service continues to consider submitting proposals to amend the appendices for the following species: Narwhal (for possible transfer from Appendix II to Appendix I); musk deer (for possible listing of species or populations in Appendix I); saiga antelope (for listing in Appendix I or II); box turtles (add to Appendix II); copperbelly water snake (add to Appendix II); bluefin tuna (add to Appendix II); whale shark (add to Appendix II); requiem and hammerhead sharks (add to Appendix II); tarantulas (add to Appendix II); Port-Orford-Cedar (add to Appendix II with its logs, sawn wood, and veneer only); bigleaf mahogany (add to Appendix II with exclusion of secondary and finished products); and two genera of African mahoganies with their logs, sawn wood, and veneer only (for possible listing in Appendix II). The Service will continue to consider a listing of freshwater pearly mussels that will provide protection to the most endangered while excluding those easily identifiable species that are used in the pearl bead industry and that are not believed to be threatened by trade. The Service is also considering a proposal to remove the non-African populations of aloes from the appendices. In addition, the Service at the suggestion of the CITES Nomenclature Committee will consider developing a proposal to clarify the present listing of the urial, *Ovis vignei*.

Proposals That the Service Does Not Plan To Submit

EIA submitted a recommendation with no accompanying information to transfer all birds listed in Appendix III to Appendix II. The Service first notes that the basis for a country adding a species to Appendix III is different from the criteria for including a species in Appendix II. Moreover, while trade ultimately may became detrimental to the survival of any Appendix III species if not carefully regulated, insufficient information was presented by EIA to justify proposals for individual species at this time.

ICCAT Watch submitted a proposal to list the western Atlantic population of the bluefin tuna, *Thunnus thynnus*, in Appendix I. In a subsequent letter, after the November 1993 meeting of the Parties to the International Convention for the Conservation of Atlantic Tunas (ICCAT), ICCAT Watch withdrew their request for the Service to consider proposing this bluefin tuna population in Appendix I. Based on the actions taken by ICCAT (as presented later in this notice under the consideration of an Appendix II listing for bluefin tuna), the Service does not believe that listing the western population of bluefin tuna in Appendix I is appropriate.

The blue shark, *Prionace glauca*, was proposed for possible listing in Appendix II or III, by the National Audubon Society in 1991. The Service has reconsidered the recommendation in preparation for COP9. The National Marine Fisheries Service (NMFS) Fishery Management Plan for Sharks of

the Atlantic Oceans placed these sharks in the pelagic species group. In the preparation for development of the management plan, a peer review effort by NMFS and non-NMFS experts evaluated the available information and determined that there was no evidence available to indicate that the pelagic species group of sharks was overfished in the Northwest Atlantic. In comparison with other sharks, blue sharks have a relatively high reproductive rate and rapid growth rate, and are widely distributed. Hence, they may be more resilient and more robust with respect to fishing pressure than many other shark species. Therefore, the Service does not intend to propose this species for listing in Appendix II, or to list it unilaterally in Appendix III.

Proposals That the Service May Submit

The following proposals are being considered for submission as proposed amendments to the CITES appendices. The Service seeks additional comments and information to assist it in making decisions whether to submit these proposed amendments.

1. Narwhal (Monodon monoceros)

EIA proposed that the narwhal be transferred from Appendix II to Appendix I. The Small Cetacean Subcommittee of the Scientific Committee of the International Whaling Commission has had difficulty in carrying out stock assessments for this species due to the amount of available data, and has expressed concern about catch levels and loss rates for some narwhal populations. The degree to which trade, as opposed to hunting for food, determines the level of narwhal catches is unclear. Therefore, the Service seeks information about population levels, stock structure, catches, and trade of this species, but without additional information on the threat to the species, the Service is unlikely to propose the transfer of this species to Appendix I.

2. Musk Deer (Moschus spp.)

The Service received a draft proposal from EIA to transfer the Appendix II populations of musk deer (*Moschus* spp.) to Appendix I of CITES. The musk deer, represented by at least four valid species, have a wide distribution in eastern Russia, Mongolia, Korea, China (including the Tibet Autonomous Region), the Himalayas (from northern Afghanistan eastwards to Nepal and Bhutan), and marginally into northern Vietnam. They range from comparatively low elevations (coniferous forests) to the highest growth of dwarf rhododendron and willow thickets (about 12,500 feet or 3,800 meters).

Musk deer are the most primitive of all living deer. Antlers are lacking in both sexes, and males have long upper canine teeth that extend far below the upper lip. A musk gland in the abdomen of the male secretes a brownish wax-like substance, which is used extensively in the manufacture of perfumes and soaps. About 28 to 30 grams (a little over an ounce) of the secretion can be obtained from a single male. Due to their secretive nature and inaccessible habitat, little is known about the population numbers of musk deer.

At the Fourth Meeting of the Conference of the Parties (COP4) to CITES held in Botswana in 1983, the Parties voted to transfer the Himalayan populations (Afghanistan, Bhutan, Burma, India, Nepal, and Pakistan) from Appendix II to Appendix I. Although there are widespread reports of rampant poaching, the trade in musk is poorly documented. The CITES Animals Committee working on significantly traded species, has identified this taxon as one for which possible problems exist and has recommended: (1) That China and Russia suspend exports of specimens of musk deer, excluding derivatives; and (2) that all Parties increase their enforcement efforts to ensure that all specimens of *Moschus* spp. in international trade, including derivatives, have been legally exported. Therefore, the Service is considering proposing the transfer of the Appendix II populations of musk deer to Appendix I. However, trade in musk from captive stock is reported, and the CITES Animals Committee has requested a report on production from captive stocks and information on the source of musk used for medicine manufacture and details of measures taken to control trade in manufactured products. The Service seeks information on the effect of trade on these species, especially any data on the volume of musk entering trade.

3. Saiga Antelope (Saiga tatarica)

EIA submitted a draft proposal to the Service to include the saiga antelope in Appendix I of CITES. There are two recognized subspecies: The Russian saiga (*Saiga tatarica tatarica*) and the Mongolian saiga (*Saiga tatarica mongolica*). Historically the saiga antelope ranged from the Ukraine to western Mongolia. Today, the species remains only in the area stretching from the steppe east of the lower Volga River across Kazakhstan through the Dzungarian Basin of northwest China to Mongolia. Presently, its distribution within Russia is not continuous, but is divided into disjunct populations. Saiga antelopes inhabit steppes and semideserts, from sea level to 5,000 feet. This antelope lives in large herds, and the early maturation and fecundity of this species allow for rapid population increases, reaching 60 to 80 percent annually.

In the 1960s the saiga antelope was the most widespread wild ungulate in the U.S.S.R., and it was estimated that approximately 2 million animals inhabited Asia. However, the population in Mongolia is listed as endangered under the U.S. Endangered Species Act (ESA). Other than humans, wolves are the main predator of the species. Lack of fodder in winter is the most important natural calamity causing mass mortality of saiga antelopes. This species is harvested for its meat, hides, fat, as well as the horns, which are exported to China. Since the 1960s, little scientific information is available on population size and trade in parts. The Service solicits additional information on international trade and population status, in order to make its final decision on whether to propose the entire species for listing in Appendix II, and if so, whether to propose any populations for Appendix I.

4. Urial (Ovis vignei)

At the Plenipotentiary meeting of the CITES Parties in 1973, *Ovis vignei* was included in Appendix I, as proposed by India, and was also referred to as urial and shapo. However, because there was no supporting documentation submitted at the time of the proposed listing, and because different references available in early 1973 attributed different subspecies and populations to *Ovis vignei*, it is not completely clear what population(s) the Parties intended to protect. Ellerman and Morrison-Scott's Checklist of Palaearctic and Indian Mammals (1966, British Museum) considered *O. vignei* to be restricted to those populations in Kashmir and Ladak. *Ovis orientalis vignei* had been described by Blyth in 1841 from specimens collected in Ladak, India.

Also at the Plenipotentiary meeting, Afghanistan proposed including *Ovis orientalis* in Appendix III (Afghanistan proposed subspecies listings for five other mammals but not for *Ovis orientalis*). However, it never did list this species; whether this is because it considered their populations to be covered by the *Ovis vignei* listing or whether the desire of the government to include them in Appendix III had changed by the time that Afghanistan acceded to CITES on January 28, 1986, is unknown.

At the time of the Second Meeting of the Conference of the Parties (COP2) in 1979, the Parties apparently considered *Ovis vignei* to include populations of urial in Iran. This interpretation is based on the absence of any debate on the coverage of the Appendix I listing when Iran proposed to delete *Ovis vignei arkal* from Appendix I. (Iran later withdrew the proposal.) While one might have expected several Plenipotentiary meeting participants to also have participated in COP2 and to have commented on any inconsistency between the original listing and the proposal presented at COP2, it is not known with certainty what was the original intent of the Parties.

In the CITES-adopted checklist for mammals, Mammal Species of the World by Honacki, Kinman, and Koeppl (1982), *Ovis vignei* is considered to represent those populations from eastern Iran to Ladak, and *Ovis orientalis* (also known as *Ovis aries*) is considered to represent those populations from western Iran to Turkey.

Adoption of a new nomenclatural reference by the Parties cannot change the entity originally listed, and, as previously noted, that listing seems unclear. A new reference, Mammals Species of the World, 2nd edition, by Wilson and Reeder (1993), retains the distribution assigned to *Ovis vignei* and *Ovis aries* (=*orientalis*) in the earlier 1982 checklist, but further highlights the issue by including synonyms (usually subspecies or species) that are associated with *Ovis vignei* and *Ovis aries* (=*orientalis*). For *Ovis vignei* these synonyms include some names that some individuals have associated with *Ovis orientalis*, e.g., *arabica, arkal, blanfordi, bochariensis, cycloceros, dolgopolovi, punjabiensis, severtzovi, varentsowi.*

Note: The entity referred to above as *severtzovi* is located between population centers of *Ovis vignei* and *Ovis ammon*, and the U.S. Fish and Wildlife Service has previously included this entity as *Ovis ammon* in the listing of this species as endangered pursuant to the U.S. Endangered Species Act.

The CITES Nomenclature Committee has not considered the listing issue to be clear enough to make a nomenclatural interpretation, and therefore, since the Parties should make this decision, the Service is considering submitting a proposal to clarify what populations are included in Appendix I as a result of the 1973 listing of *Ovis vignei*.

The Service seeks information on the status of and trade in the various populations/subspecies of the urial distributed from northwest India, through Pakistan (except for the extreme northern portion), Afghanistan (except for the extreme northeast portion), western Tajikistan, and Turkmenistan, to northern and eastern Iran. The Service may propose listing any or all of these populations in Appendix I or Appendix II.

5. Box Turtles (Terrapene spp.)

Prior to the Eighth Meeting of the Conference of the Parties in 1992 (COP8), the New York Zoological Society submitted a proposal to the Service for its consideration, to add the genus *Terrapene* (box turtles) to Appendix II, while retaining *T. coahuila* (Aquatic box turtle, or Coahuilan box turtle) in Appendix I. The Service initially considered submitting this proposal for consideration at COP8, but decided not to due to a lack of trade data. The Service is now considering submitting this proposal, based on both biological information and trade information from the Service's Law Enforcement Management Information System (LEMIS). While a separate code for data entry of information on trade in specimens of this genus was provided after COP8, the Service's records of exports and imports in LEMIS for species not listed in the CITES appendices are to be considered as a minimum for the numbers of specimens in trade.

The genus *Terrapene* is comprised of four species (*T. carolina, T. coahuila, T. nelsoni*, and *T. ornata*), with 11 recognized subspecies; *T. coahuila* is already listed in Appendix I.

Terrapene nelsoni has a very small and fragmented range on the west coast of Mexico. *Terrapene ornata* ranges over large sections of the midwestern United States and the Great Plains, from Texas north to southern South Dakota, and eastward to Indiana. *Terrapene carolina* is the most widely distributed species of box turtle, and is found from Canada to Mexico; its range is from Maine southward to Florida, and westward through southern Canada to Michigan, Illinois, Kansas, Oklahoma, and Texas. Although widespread, the species is reported to be rare or extinct in parts of its range in Maine, New Hampshire, Michigan, and Ontario, and declining elsewhere in its range.

Box turtles are long-lived and slow-growing, with low annual reproductive output and late onset of sexual maturity (10–20 years). They also have high site fidelity, and loss of adults from a population can have a significant detrimental effect on the status of the population. Box turtles are important components of many terrestrial ecosystems. Development activities have increasingly fragmented their habitats. The sale of *T. carolina* and *T ornata* is restricted in several States, while allowed in others.

Based on Service LEMIS data, 26,817 box turtles were exported from the United States in 1992, and 18,134 were exported in 1993. However, 1993 data are not yet fully entered into the computer system, and are thereby incomplete. These figures represent the number of box turtles reported to the Service as being exported; it is not possible to ascertain how many were removed from the wild. Whether or not this level of international trade in these species is detrimental to populations must take into account the numbers removed from the wild for international trade along with the numbers removed from the wild for other purposes, including but not limited to interstate and intrastate commerce, habitat loss, habitat degradation, disease, and predation.

The Service solicits additional information on population trends, levels of trade, and the affect of trade on population status for review in deciding whether to submit a proposal to include the genus *Terrapene* in Appendix II, while retaining *T. coahuila* in Appendix I.

6. Copperbelly Water Snake (Nerodia erythrogaster)

The northern subspecies. *Nerodia erythrogaster neglecta*, of this water snake is considered to be threatened. The current distribution of this subspecies is restricted to the lower Ohio River Valley and the lower Wabash River Valley in extreme southwestern Indiana and adjacent Illinois and Kentucky, and in southern Michigan northeastern Indiana, and northwestern Ohio. Due to significant population declines, especially in Michigan, Ohio, and northern Indiana, the subspecies now persists only in scattered, isolated pockets where suitable habitat exists. The total population is estimated approximately 1,530 adults rangewide, with 368 breeding pairs.

A proposed rule to list the northern copperbelly water snake as threatened under the U.S. Endangered Species Act (ESA) was signed by the Service's Director on July 26, 1993. Recently there appear to be indications that this taxon is intercrossing with another subspecies in areas of overlap of the ranges of these two taxa.

Habitat loss and fragmentation are the primary factors threatening the continued existence of the subspecies, but amateur collectors reportedly continue to take snakes from the wild.

It is sought because of its rarity, its large size, its unique coloration, and its value in the pet trade. It is reported that an international commercial dealer offered $260 for a breeding pair of northern copperbelly water snakes.

The Service is seeking information on the extent and significance of trade in the species, and would consider proposing the entire species for Appendix II if there is sufficient concern about similarity of appearance.

7. Bluefin Tuna (Thunnus thynnus)

The Service received a draft proposal from ICCAT Watch, a coalition consisting of the National Audubon Society, the Center for Marine Conservation, and World Wildlife Fund-US, to list bluefin tuna throughout the Atlantic in Appendix II.

Previously, a notice was published in the **Federal Register** (56 FR 33894, July 24, 1991) seeking comments on a proposal from the National Audubon Society to list the western Atlantic stock of bluefin tuna in Appendix I. The NMFS initially recommended that public comment be received on the merits of proposing the species for listing in Appendix II. After review of all comments and available information, the Service decided not to propose listing of the species in either appendix.

Management of the Atlantic bluefin tuna falls under the responsibility of parties to the ICCAT. Provisions of Article XIV of CITES relieve ICCAT member countries from CITES obligations with respect to trade in specimens of marine species included in Appendix II, if such trade is in accordance with the provisions of ICCAT and if a certificate stipulating to this condition is given by the CITES Management Authority of the country of introduction.

For western Atlantic bluefin tuna, the current stock assessment (1993) by the ICCAT Standing Committee on Research and Statistics (SCRS) estimated stock trajectories showing a significant decline from 1970 to 1992 but with a small increase in 1993. The 1993 median estimate of abundance for 8-year-old and older tuna is 10.9 percent of the 1970 median, 20 percent of the 1977 median, 43 percent of the 1982 median, and 78 percent of the 1988 median. In terms of spawning biomass, current abundance is estimated at between 6 percent and 12 percent of that which could produce maximum sustainable yield. Projections by the SCRS stock abundance, based on the assumption that the current relationship between spawning biomass and recruitment will prevail in the future, suggest that there is about a 50 percent chance of preventing further decline in mature stock size if catches between 1994 and 2001 were limited to 1,200 metric tons per year (mt/yr). Lower catches result in higher odds of preventing further reductions in spawning stock. The allowable catch in 1994 is, 1,995 mt. The allowable catch in 1995 is 1,200 mt, subject to scientific review of the most recent assessment results.

In addition, there is an uncertainty about the proper north-south dividing line between the western and eastern populations. In recent years, Japanese vessels have harvested a substantial tonnage of bluefin tuna just east of the original N–S line. At least a portion of this take may have included tuna from the western population.

For eastern Atlantic bluefin tuna, the 1992 assessment shows great variability in the abundance of the youngest age groups (ages 1–4) over the period 1970–91). Estimates of abundance of fish 5 years old or older, which includes most of the spawning stock, have shown a consistent downward trend, the average abundance of fish 5 years old or older for 1990–92 being about one half the average estimate for 1970–72. Abundance estimates for the oldest fish of this stock (ages 10 and older) have shown an even greater downward trend since 1970. The average estimated abundance of fish in this age group for the period 1990–92 was about one third of the average estimate for the 1970–72 period.

Recent (1991) estimated fishing mortality rates for eastern Atlantic bluefin are between 2 and 7 times the common fishing mortality rate reference levels which are thought to result in long-term average yields near maximum sustainable yield and provide adequate safeguards against recruitment failure. Over the long term, fishing mortality rates as high as those estimated are likely to result in increased risks of stock collapse.

At COP8, Sweden proposed the listing of the western Atlantic population of bluefin tuna in Appendix I and the eastern Atlantic population in Appendix II. The proposal was withdrawn by Sweden at the meeting based on a set of conditions which primarily included the requirement that "ICCAT continue its initiatives, with particular emphasis on quota reductions, to restore and maintain Atlantic bluefin tuna populations * * *."

At the 1993 Regular Meeting of ICCAT, the quota for take of the species in the western Atlantic was reduced from the 1991 level by 25 percent of 1994 and by another 30 percent for 1995, for a 55 percent total reduction since Sweden submitted its resolution to COP8. In addition, the quota for Japanese fishing vessels, in the central Atlantic, whose harvest had been 450 mt annually from the western Atlantic and about 1,000 mt annually from the eastern Atlantic, was capped at 1,300 mt for the 2-year period 1994–95.

Progress was made on other conservation measures, including the development of a Bluefin Statistical Document (similar to a CITES certificate of origin), which would be required by all ICCAT countries for the importation of bluefin tuna. This document is already required for frozen bluefin tuna imports. It will be partially implemented for fresh tuna by June 1994, and full implementation is scheduled for December 1994, when the document must be validated by the appropriate government official. An intersessional meeting is scheduled for spring 1994 to discuss, among other things, the use of trade measures as an enforcement tool. Thus, a proposal to list this species in Appendix II may not be warranted at this time based on the progress at the last two ICCAT meetings.

However, ICCAT has not yet fully implemented the quota reductions or the Bluefin Statistical Document Program, and other measures may be necessary for ICCAT to take with respect to non-ICCAT countries in order to supplement the existing conservation regime. Therefore, the Service requests comments on the merits for an Appendix II listing of the entire Atlantic population, particularly with respect to collecting trade date concerning non-ICCAT countries.

8. Whale Shark (Rhincodon typus)

EIA proposed that the whale shark be considered for CITES protection, and subsequently provided a draft proposal to include this species in Appendix II. Whale sharks are large filter feeders and exist in the temperate seas throughout the world. Whale sharks are vulnerable to commercial harpoon gear and collisions with vessels. Whale sharks have supported small to medium commercial fisheries in India, Pakistan, China, the Philippines, and Senegal, where catches may be increasing. The flesh is eaten fresh or after being slated and dried.

The whale shark is slow growing and may produce few young, and consequently, may be easily overexploited. The NMFS Fishery Management Plan for Sharks of the Atlantic Oceans placed whale sharks in the large coastal species group, and this group of sharks is considered to be overfished in the Northwest Atlantic

and to have declined off southern California. However, this species does not appear to be an important fisheries species.

Because of the recent increases in worldwide catches of sharks for the meat and fins, and for medicinal purposes, the Service is requesting information this species, but without more specific information indicating population declines or increases in trade, the Service may not have sufficient information to warrant submission of a proposal for this species.

9. Requiem Sharks (Carcharhinidae spp.) and Hammerhead Sharks (Sphyrnidae spp.)

These species were proposed for review for inclusion in Appendix II or III, by the National Audubon Society in 1991. At that time, the Service did not believe that sufficient information was available to propose these species for consideration at COP8. However, the Service is re-examining this recommendation in preparation for COP9.

These species are normally targeted by commercial shark longline and gillnet fisheries and are also subject to take in recreational fisheries. The NMFS Fishery Management Plan for Sharks of the Atlantic Oceans placed these sharks in the large coastal species group, but many individuals of these species make extensive migrations. In the preparation for development of the management plan, a peer review of effort by NMFS and non-NMFS experts evaluated the available information and determined that the large coastal species group of sharks was overfished in the Northwest Atlantic. As a consequence, catch quotas imposed for the large coastal shark species were set at levels representing a 30 percent drop pattern. These sharks are vulnerable to overexploitation.

Because of the recent increases in worldwide catches of sharks for the meat and fins, and for medicinal purposes, the Service is requesting information on these species. However, without more specific information indicating specific population declines or increases in trade, the Service may not have sufficient information to warrant submission of any proposal for these species.

10. Freshwater or Pearly Mussels (Family Unionidae)

The bivalve mollusc family Unionidae (pearly mussels or naiads) is one of the most diverse mollusc families in North America. Their geographic distribution is widespread; naiads are found in most of the major river drainages in the Southeast and Midwest, including the Upper Mississippi drainage system, and as far west as Oklahoma and Texas. Members of this family also occur in Europe

At the Sixth Meeting of the Conference of the Parties in 1987, the Ten-Year Review Committee Chairman withdrew a proposal to remove the six unionid species listed in Appendix II (with the other 26 species remaining in Appendix I) with the understanding that the United States would review the need for the listings.

Most of the species included in Appendix I are listed as endangered pursuant to the U.S. Endangered Species Act, and two of the species included in Appendix II are now listed as endangered. However, seven of the Appendix I species and the remaining four Appendix II species are not listed as endangered or threatened under ESA. A few species of pearly mussels are valued as a source of beads for the cultured pearl industry, and shells of these species as well as the pearls made from such shells are heavily traded. The Service's concern is how to provide the appropriate protection to the endangered pearly mussels without unnecessarily regulating the trade in the few commercially valuable, non-threatened mussels.

Mussel shells used in the manufacture of cultured pearls are identifiable by their heavier, all white shells, and they occur in larger rivers and reservoirs with few species of endangered mussels. Furthermore, State regulations usually prohibit the collection of shells from those sections of rivers with significant populations of the endangered mussels. Even with these and other State restrictions, some endangered mussels may be harvested by the divers; however, it is believed that the buyers exclude shells not valuable for the making of pearl beads, and the exporters further screen all shells to sort them into species and size categories to fill specific orders from foreign buyers. Therefore, the likelihood of endangered mussels being exported for the pearl industry is extremely low.

Rather, the potential trade threat to the endangered species may be from shell collectors and the use of shells in the jewelry industry. It is probably only the most endangered species that would be affected by trade for collections, and the Service is endeavoring to determine whether there is any threat to endangered species from the trade in mussels for jewelry.

There are about 58 endangered freshwater mussels and another 53 that may be endangered but for which definitive status information is not yet available. If the most endangered of these species may be affected by trade, having the species listed under CITES would provide additional protection for the species. Therefore, the Service is considering preparing a proposal to list in Appendix I only the most endangered of the species (thus, downlisting some of the present Appendix I species) and proposing the remainder of the native species for inclusion in Appendix II, except those clearly identifiable species exported for the pearl industry. The basis for this proposal would be either because of status of the species or for reasons of similarity of appearance. The species that the Service is considering excluding are: *Actinonaias ligamentina* (=*A. carinata*), *Amblema plicata*, *Cyclonaias tuberculata*, *Elliptio crassidens*, *Elliparia lineolata*, *Fusconaia ebena*, *Fusconaia flava*, *Ligumia recta*, *Megalonaias nervosa*, *Obliquaria reflexa*, *Pleurobema cordatum*, *Quadrula apiculata*, *Quadrula metanevra*, *Quadrula nodulata*, *Quadrula pustulosa*, *Quadrula quadrula*, and *Tritogonia verrucosa*. This approach provides the shortest list (unless the entire unionid taxon were listed, which would add an unnecessary permit burden), and the shorter list would assist enforcement officers in focusing their efforts. This approach would also involve downlisting some species presently listed in Appendix I. An alternative may be that, for those species where there is not a sufficient probability of trade to warrant any CITES listing, the Service might propose the deletion of present Appendix I and II freshwater mussel species.

The Service would especially appreciate comments as to whether information already available sufficiently identifies the most endangered species so that further identification of these species by listing them in Appendix I does not increase the threat from collection. Additional information on the trade in shells for the jewelry industry would be appreciated, as well as comments on the above recommendations for species to be excluded from any proposal that the Service may submit.

11. Tarantulas (Brachypelma spp.)

The Service has been considering listing additional *Brachypelma* species to address look-alike concerns. As a result of the Service's discussions, a proposal was received from Dr. Robert Wolff of Trinity Christian College, Palos Heights, Illinois, to list all members of the tarantula genus *Brachypelma* (also known as *Euathlus* and

Brachypelmides) in Appendix II of CITES. Most species of this genus have very limited distributions within the general area of Central America from northern Mexico south into Colombia, and are known only from a very limited geographic region within a single country. The very limited distributions of these species places each in greater danger of possible extinction.

Brachypelma tarantulas are ground-dwelling, burrowing spiders occurring from semi-desert regions, through tropical dry deciduous forests, to tropical moist forests. The red-haired *Brachypelma* tarantulas are very popular as pets. They are long-lived spiders; the females frequently live up to 20 years, with as many as 12 possible years for breeding. The males are only mature for a single breeding season and are heavily preyed upon during their wanderings. Whereas up to 400 individual eggs may be produced in each egg sac, the number of hatchlings surviving to adulthood is extremely small (about 1 percent). Therefore, the loss of mature individuals from a population is a major threat to the species; larger individuals are preferred by the pet trade. Several species in the genus are poorly described or virtually unknown, and no thorough population studies have been conducted on any of the species.

Very little is known about the trade in *Brachypelma* tarantulas and most specimens are probably coming out of Mexico without proper documentation. Mexico prevents the hunting and export of tarantulas without a permit. At the Fifth Meeting of the Conference of the Parties (Buenos Aires, 1985), the United States proposed the inclusion of *Brachypelma smithi* (the red-kneed tarantula) in Appendix II because of widespread documented trade. The listing of all *Brachypelma* tarantulas would eliminate the present confusion over identification of which species are entering trade. Most species within the genus are easily recognized by the red or reddish hairs on the legs or abdomen. The Service is, therefore, considering the listing of all members of the genus *Brachypelma* in Appendix II and seeks information on the effects of trade on these tarantulas, especially any data on the volume of specimens entering trade.

12. Port-Orford-Cedar (Chamaecyparis lawsoniana)

In response to the July 15, 1993, notice (58 FR 38112) which initiated listing preparation for COP9, the Oregon Natural Resources Council provided a thorough draft proposal to include the Lawson-cypress or Port-Orford-cedar (*Chamaecyparis lawsoniana*) in Appendix II. This species is native to southwestern Oregon and northwestern California within a general coastal area of less than 200 by 100 miles, mostly from about Coos Bay, Oregon south to Arcata, California. It is also in cultivation (and has a number of horticultural varieties). The species has been reduced both in range and by over 85 percent in natural standing volume, and is now logged almost entirely for export (primarily to Japan). An introduced pathogen (*Phytophthora lateralis*) has been spreading particularly along waterways and as a side effect of soil transport by vehicles and logging equipment. The main stimulus for the logging of Port-Orford cedar is high export prices, and one important stimulus for the construction of many logging roads is the export of raw logs. This fungus has spread through the northern and western portions of the tree species' range, and it has infected perhaps 20 percent of the remaining coastal stands. The root disease is virulent, and the infected trees cannot be cured. By the mid-1980s, an estimated 60 percent of the trees of this species in southwestern Oregon's young-growth forests had been killed by this introduced disease.

The Service is considering submission of a proposal to list the U.S. population of this species and its logs, sawn wood, and veneer in Appendix II. Information is desired particularly on populations that are functioning naturally and are effectively safe from habitat loss, exploitation, and infection; and in addition, information is requested on the location of U.S. non-natural silvicultural plantations and the extent of such exports from them.

13. Bigleaf Mahogany (Swietenia macrophylla)

American mahogany, the genus *Swietenia*, is native to the neotropics (56 FR 33898–33899, July 24, 1991). Two of the three species in this genus are listed in CITES Appendix II: *Swietenia humilis* (Pacific Coast mahogany) including its parts and derivatives, which occurs in Mexico and Central America; and *Swietenia mahagoni* (Caribbean mahogany) including only its logs, sawn wood, and veneer, which occurs on some Caribbean islands and extends to southern Florida. The unlisted species, *Swietenia macrophylla* (bigleaf mahogany), occurs from South America to Mexico; it apparently forms hybrids naturally with *S. humilis* in Costa Rica. In the Carribean, *S. mahagoni* seems to have crossed spontaneously with introduced *S. macrophylla* to form hybrids that have been called *S. aubrevilleana*. *Swietenia* species and hybrids also are in cultivation (and may be locally naturalized); some are grown ornamentally and/or silviculturally. *Swietenia macrophylla* and *S. mahagoni* are grown with limited success in plantations in the tropics of the New and Old Worlds.

At COP8, Costa Rica and the United States proposed to include *Swietenia macrophylla* and its natural hybrid in Appendix II; the U.S. proposal excluded the Old World populations and secondary and final products (e.g., finished products and derivatives). In a preliminary meeting during COP8, all the range States except three (Bolivia, Peru and Honduras) tentatively supported the listing. Costa Rica decided to support the U.S. proposal. However, because of lack of sufficient consensus, the United States withdrew its proposal (cf. 57 FR 20443, May 13, 1992).

In response to the July 15, 1993, notice (58 FR 38112) that initiated listing preparations for COP9, the Natural Resources Defense Council provided a new extensive draft proposal to include the neotropical populations of *Swietenia macrophylla* and its natural hybrid in Appendix II, including only the timber and wood processed to the first stage of transformation (i.e., primary products), such as logs, wood in the rough, sawn wood, veneer sheets, and plywood. The September 1993 meeting of the CITES Plants Committee favored submission of a proposal for this species.

The Service regards the available information and data sufficient to support reproposing this species and its natural hybrid, and believes that there is increasing understanding of the consequences and value of its regulation under CITES Appendix II. The United States has become the main importer of this species, and the Service plans to provide a draft proposal to the range States for their comments. Information is desired particularly on populations that are functioning naturally and are effectively safe from habitat loss and exploitation.

14. African Mahoganies

The Fauna and Flora Preservation Society provided draft proposals to list the African mahoganies in Appendix II. African mahoganies include the genera *Entandrophragma* (about 11 species) and *Khaya* (about 6 species), which are native to the tropics of Africa, with *Khaya* extending to the Comoros Islands and Madagascar. Some of the 17 species are in cultivation, including some silvicultural plantations. The majority of the species have some legal protection

in one or more countries, generally with respect to their export. All of the species have been declining due to habitat conversion and selectively varied commercial exploitation, and nearly all of them have been reported to be threatened in various countries and significant portions of their ranges.

The United Nations Food and Agriculture Organization has recognized the need to conserve most *Khaya* and some *Entandrophragma* species, being concerned with their genetic erosion. The September 1993 meeting of the CITES Plants Committee reviewed draft proposals for these genera, and favored the circulation of these drafts for their possible submission. In November 1993, Germany circulated them to the range States for their views. The Service may join with Germany's initiative, or provide draft proposals to the range States by April 1994 for their comments. Information is desired particularly on populations of each species that are functioning naturally and are effectively safe from habitat loss and exploitation.

15. Non-native aloes (Aloe spp.)

All species of *Aloe* are included in the CITES appendices, with nearly all in Appendix II, including the plants called *Aloe vera* (synonym *Aloe barbadensis*). The genus is essentially African in range, extending to Madagascar and the Arabian Peninsula, and perhaps naturally to the Canary Islands. Plants regarded as *Aloe vera* have been used for millennia and the yellow-flowered species may be extinct in its native range in the wild; it may have been native to the Canary Islands, or perhaps the southern Arabian Peninsula or northeastern Africa (e.g., Ethiopia), where similar species occur.

The whole plants commonly in trade as aloe vera are of artificially propagated (or also naturalized) origin. Their regulation has become an enforcement burden. To deal with this situation, the Service is considering submission of a proposal by June 1994 to remove the non-native populations of *Aloe* that are geographically unrelated to the general African area. Thus, all species of *Aloe* where they may be native, including all of Africa considered broadly (e.g., including neighboring islands such as the Canary Islands and Socotra) and the Arabian Peninsula, would continue to be regulated by CITES. The September 1993 meeting of the CITES Plants Committee favored submission of some such proposal on this problem, and the conservation committee of the International Organization for Succulent Plant Study offered to assist in its preparation. Information is requested on whether exclusion of plants from this non-native population of *Aloe* would significantly increase risk to the survival in its native range of any *Aloe* (*i.e.*, species, subspecies, botanical variety, or significant population).

Future Actions

The Service will consider all available information in deciding which proposals warrant consideration by the Parties. The U.S. proposals must be submitted to the CITES Secretariat by June 10, 1994, for consideration at the November 1994 meeting of the Conference of the Parties in Fort Lauderdale, Florida. After the June date, the Service will publish a further **Federal Register** notice to announce its decisions on the potential proposals discussed above. Persons having current biological or trade information about the species being considered are invited to contact the Service's Office of Scientific Authority at the above address.

The primary author of this notice is Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: January 3, 1994.

Mollie H. Beattie,

Director.

[FR Doc. 94–1613 Filed 1–26–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, and 678

[I.D. 011294A]

Atlantic Highly Migratory Species; Receipt of Petition for Rulemaking; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to notice of receipt of petition for rulemaking and request for comments.

SUMMARY: NMFS corrects the notice of receipt of petition for rulemaking on issues relating to Atlantic highly migratory species published on December 22, 1993 (58 FR 67761). The National Fishing Association (NFA) petitioned NMFS to restrict commercial net fishing in certain months in five special management zones defined in the petition for the offshore waters of the northwest Atlantic Ocean. The petition also requests mandatory logbooks for recreational vessels fishing for certain highly migratory species and a revised definition of a commercial fishing vessel. This document corrects the longitude and latitude coordinates of the restrictive fishing zones.

FOR FURTHER INFORMATION CONTACT: Rebecca Lent, 301–713–2347.

In the notice of receipt of petition for rulemaking published December 22, 1993, which was the subject of FR Document 93–31277, on page 67761, the table is corrected to read as follows:

Zone	Area	Restricted period	Coordinates
1	W. Atlantis to Block Canyon	7/1 to 10/15	40° 00′ N. by 70° 30′ W. to 41° 00′ N. by 70° 30′ W. to 41° 00′ N. by 71° 50′ W. to 40° 30′ N. by 71° 50′ W. to 40° 30′ N. by 72° 00′ W. to 40° 00′ N. by 72° 00′ W. to 40° 00′ N. by 70° 30′ W.
2	Hudson to Toms Canyon	7/1 to 10/15	39° 00′ N. by 72° 00′ W. to 40° 30′ N. by 72° 00′ W. to 40° 30′ N. by 72° 30′ W. to 40° 10′ N. by 72° 30′ W. to 40° 10′ N. by 73° 40′ W. to 39° 00′ N. by 73° 40′ W. to 39° 00′ N. by 72° 00′ W.
3	Carteret to Baltimore Canyon	7/1/ to 10/15	38° 00′ N. by 73° 00′ W. to 38° 30′ N. by 73° 00′ W. to 38° 30′ N. by 72° 50′ W. to 39° 00′ N. by 72° 50′ W. to 39° 00′ N. by 74° 00′ W. to 38° 00′ N. by 74° 00′ W. to 38° 00′ N. by 73° 00′ W.

Zone	Area	Restricted period	Coordinates
4	Poormans to Norfolk Canyon	5/1 to 10/15	37° 00′ N. by 74° 00′ W. to 38° 00′ N. by 74° 00′ W. to 38° 00′ N. by 75° 00′ W. to 37° 00′ N. by 75° 00′ W. to 37° 00′ N. by 74° 00′ W.
5	Norfolk to the Point	5/1 to 10/15	35° 00′ N. by 74° 00′ W. to 37° 00′ N. by 74° 00′ W. to 37° 00′ N. by 75° 15′ W. to 35° 00′ N. by 75° 15′ W. to 35° 00′ N. by 74° 00′ W.

Dated: January 21, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 94–1649 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 18
Thursday, January 27, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Model Procedure and Practice Regulations

AGENCY: Administrative Conference of the United States.

ACTION: Notice of availability.

SUMMARY: The Administrative Conference's Model Rules Working Group has completed a set of model procedure and practice regulations for agency adjudications.

TO OBTAIN COPIES OF THE MODEL REGULATIONS CONTACT: Susan Mack, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037, or (202) 254–7020.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles or Jeffrey S. Lubbers, Administrative Conference of the United States, (202) 254–7020.

SUPPLEMENTARY INFORMATION: A Working Group of the Office of the Chairman of the Administrative Conference has completed a set of model procedure and practice regulations, with related commentary, suitable for use in those agency proceedings that offer an opportunity for an oral, fact-finding hearing before an agency adjudicator, whether conducted pursuant to the Administrative Procedure Act, other statutes, or agency regulations or practice. Hearings are currently held before presiding officers at scores of federal departments and agencies. Each agency has its own set of procedure and practice rules that cover essentially the same procedural areas. To the extent that the conduct of hearings at these agencies presents similar problems, it appears useful to formulate a set of model procedure and practice rules that addresses common procedural problems. Such model regulations can be used by those agencies that are either required to establish formal procedures for new adjudicatory programs or interested in amending their existing rules in selected areas. Because each agency has its own, unique procedural needs, the model rules are not intended as a set of uniform procedures. Rather, they are designed to provide a set of recommendations that can be considered by agencies in light of their special procedural requirements.

Dated: January 24, 1994.

Jeffrey S. Lubbers, Research Director.

[FR Doc. 94–1783 Filed 1–26–94; 8:45 am]

BILLING CODE 6110–01–W

Committee on Rulemaking; Public Meeting

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

DATES: Wednesday, February 9, 1994 at 1:00 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee will discuss Professor Roy A. Schotland's report on Exemption 8 of the Freedom of Information Act, which covers certain bank information. The issue is whether recommendations should be made that the exemption be modified or eliminated. The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meeting will be available on request.

Dated: January 24, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–1784 Filed 1–26–94; 8:45 am]

BILLING CODE 6110–01–W

AGENCY FOR INTERNATIONAL DEVELOPMENT

Loan Guarantees to Israel Notice of Investment Opportunity

The Government of Israel (the "GOI") wishes to select a financial advisor in connection with the issuance of U.S. Agency for International Development ("USAID")-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to $10 billion principal amount of loans over the next five-year period, with a maximum of $2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of a financial advisor for an offering contemplated to be made under the five-year authorization.

The GOI would like to receive proposals from interested firms on an expedited basis. Proposals must be submitted in accordance with a Request for Proposals available from the GOI, by February 4, 1994. For information regarding the submission of proposals, please contact Mr. Eliahu Ziv-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 350 Fifth Avenue, New York, N.Y. 10118 (fax: 212/736–2759).

The selected financial advisor will not be eligible to participate in the underwriting of the guaranteed loans.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned:

Room 3328, New State, Washington, DC 20523–0030, Telephone: 202/647–6504

Dated: January 21, 1994.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 94–1918 Filed 1–26–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–830]

Initiation of Antidumping Duty Investigation: Coumarin From the People's Republic of China

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

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–4136 or 482–0186, respectively.

INITIATION OF INVESTIGATION:

The Petition

On December 30, 1993, we received a petition filed in proper form by Rhone-Poulenc Specialty Chemicals Co. (petitioner). Petitioner submitted amendments to the petition on January 13 and 14, 1994. In accordance with 19 CFR 353.12, petitioner alleges that imports of coumarin from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

Petitioner stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is coumarin. Coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H-1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumaric acid lactone, coumarinic anhydride, 2–Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the petition, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (i.e. prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on average unit prices derived from U.S. Census import statistics, and on price lists from U.S. importers of coumarin.

Petitioner contends that the foreign market value (FMV) of PRC-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. The PRC is presumed to be an NME within the meaning of section 771(18)(C) of the Act, and the Department has treated it as such in previous investigations (see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC, 58 FR 37908 (July 14, 1993)). In the course of this investigation, parties will have the opportunity to address this NME presumption and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the NME (see Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China, 57 FR 15052 (April 24, 1992)).

Because of the extent of central control in an NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China, September 20, 1993, (58 FR 48833) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government determines which factories shall produce for export to the United States, we intend, for purposes of this investigation, to base FMV only on those factories in the PRC which are known to produce coumarin for export to the United States.

Petitioner calculated FMV on the basis of the valuation of the factors of production. The factors of production used by petitioner were based on petitioner's experience at its manufacturing facility, which it states is comparable to the PRC production process.

In valuing the factors of production, petitioner used India as the surrogate country. For purposes of this initiation, we have, pursuant to section 773(c)(4) of the Act, accepted India as an appropriate surrogate country because its economy is comparable to the PRC's.

Petitioner's FMV consisted of the sum of materials, labor, energy, utilities, overhead, general expenses, profit, and packing. In accordance with the hierarchy preferred for valuing factors (set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) (Comment 4)), petitioner relied where possible on publicly available information. Where such information was unavailable, petitioner relied on its own cost or experience.

Pursuant to section 773(c)(1) of the Act, petitioner added to the labor and material costs the statutory minima of 10 percent for general expenses and eight percent for profit, as well as an amount for packing based on import statistics from India.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that the merchandise is being, or is likely to be, sold at less than fair value. Based on

our analysis of information submitted in the petition amendment, we found it necessary to conduct further research regarding the pricing of certain factors of production upon which FMV was based. Subsequent to that research, petitioners submitted amendments to the petition including additional price information. The comparison of USP and FMV in the petition, as amended, indicates margins of 33.59% to 444.37%. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for USP and FMV in determining BIA.

Initiation of Investigation

We have examined the petition on coumarin and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of coumarin from the PRC are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action, and we have done so.

Preliminary Determination by the ITC

The ITC will determine by February 14, 1994, whether there is a reasonable indication that imports of coumarin from the PRC are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: January 19, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–1780 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–307–810]

Preliminary Negative Countervailing Duty Determination: Phthalic Anhydride from Venezuela

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

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin M. Heim or Cynthia Thirumalai, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or 482–4087, respectively.

PRELIMINARY DETERMINATION

Case History

Since the publication of the notice of initiation in the **Federal Register** (58 FR 60845, November 18, 1993), the following events have occurred.

On November 23, 1993, we issued a questionnaire to the Government of Venezuela ("GOV") in Washington, DC., concerning petitioners' allegations. On January 5, 1994, we received responses from the GOV and Oxidaciones Organicas, C.A. (Oxidor).

Scope of Investigations

For purposes of this investigation, phthalic anhydride ("PA") is an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although sometimes it is produced from naphthalene. PA is predominately used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. The subject PA is produced in two physical forms, molten and flaked.

The PA subject to this investigation is currently classified under subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Injury Test

On August 31, 1990, Venezuela became a contracting party to the General Agreement on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(3) requires a finding that the GATT does not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party and the merchandise under investigation is nondutiable, the ITC is required to determine whether, pursuant to section 303(a)(2), imports of this merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. On December 1, 1993, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of PA from Venezuela.

Petitioners

Petitioners are Aristech Chemical Corporation, BASF Corporation, Koppers Industries, Inc. and Stepan Company. Petitioners state that they represent 75 percent of the domestic phthalic anhydride industry.

Respondents

The Government of Venezuela and Oxidor are respondents. While there are two producers of PA in Venezuela, Oxidor accounted for over 85 percent of exports to the United States during the POI and, hence, was selected as the sole respondent.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring bounties or grants, the period of investigation ("the POI"), is April 1, 1992 to March 30, 1993, which corresponds to Oxidor's fiscal year.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Program Preliminarily Determined Not To Be Countervailable

Preferential Pricing of Orthoxylene Feedstock

Petitioners alleged that the government-owned petrochemical company, Petroquimica de Venezuela, C.A. ("Pequiven"), is selling orthoxylene (an input product to PA) to Venezuelan producers of PA at preferential prices.

In its response, the GOV stated that, within Venezuela, Pequiven sells orthoxylene to only two customers, both of which produce PA. Furthermore, it stated that the prices that Pequiven charges these companies are tied to international prices for orthoxylene.

In order to determine whether the GOV, through the state-owned company, Pequiven, provided orthoxylene to PA producers at preferential prices, we followed the hierarchy for determining benchmark prices as found in § 355.44(f) of the Department's Proposed Regulations (54 FR 23381, May 31, 1989). The Department's preferred benchmark is the non-specific price that the government charges to the same or other users of the same good within the political jurisdiction. As noted above, within Venezuela, Pequiven sells orthoxylene only to the two PA producers. Both PA producers are charged the same price by Pequiven. As a result, we do not have a non-specific price to use as a benchmark.

In the absence of a non-specific price, the Department normally looks to the alternative benchmarks listed in § 355.44(f)(2) of the Proposed Regulations. The first alternative listed in the Proposed Regulations is the price charged by the same seller for a similar or related good adjusted for any cost differences. The petition identified paraxylene and mixed-xylene as two similar products. While Pequiven agrees that these two products, in addition to metaxylene, are similar products to orthoxylene, it does not produce or sell those products. Pequiven did not identify any other similar products. Therefore, we were unable to use this approach to calculate a benchmark.

The second alternative listed in the Proposed Regulations is the price charged within the jurisdiction by other sellers for an identical good or service. As stated in Carbon Black from Mexico; Preliminary Results of Countervailing Duty Administrative Review (51 FR 13269, April 18, 1986), "[t]hese other sellers may include private sellers within the jurisdiction or foreign sellers selling into the jurisdiction * * *" Pequiven is the only domestic producer/seller of orthoxylene in Venezuela. However, orthoxylene was imported into Venezuela during the POI.

The GOV provided U.S. export statistics on shipments of orthoxylene to Venezuela during the period 1992–1993. From these statistics, we used the information on the one entry that occurred during the POI to calculate a benchmark price since this price reflects "a price charged within the jurisdiction by other sellers for an identical good." This import into Venezuela from the United States was reported on a FAS basis. Therefore, we added an amount for ocean freight and insurance from the United States to Venezuela. The amount for ocean freight and insurance was obtained from an independent shipping company (see memorandum from case analyst to the file, January 13, 1994).

We then compared the adjusted import price to the price Pequiven charged for orthoxylene in the month that orthoxylene was exported from the United States. Based on this comparison, we found that Pequiven's price was greater than the price of imported orthoxylene.

For the purposes of this preliminary determination, we find the use of a single import price to be a sufficient basis for our analysis. We examined prices in the largest international markets for orthoxylene and found minimal price fluctuations during the POI. In addition, the import price approximated the prices in these markets.

Furthermore, as stated above, Pequiven ties its domestic prices to international prices. Therefore, we would expect to find only negligible differences between the price Pequiven charges domestically and the price of imports into Venezuela. To test this assumption, we averaged U.S. import prices for the three months in which we had data (one within the POI and two within two months of the POI on either side). We compared this average to the average price Pequiven charged in the same three months and found that Pequiven's average price was greater than the average price of the imports from the United States. Therefore, we find that the GOV, through Pequiven, did not provide orthoxylene to PA producers at preferential rates during the POI.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in Venezuela of the subject merchandise did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

A. FINEXPO Preferential Short-Term Export Loans

B. FINEXPO Preferential Long-Term Export Loans

C. Excessive Tariff Drawback

D. Preferential Tax Exemptions Under the 1966 Income Tax Law

Because we find that the GOV did not provide orthoxylene at preferential rates and all other programs were not used, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of PA from Venezuela.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.38, any interested party or U.S. Government agency may submit case briefs or other written comments with ten copies of the business proprietary version and five copies of the nonproprietary version to the Assistant Secretary no later than March 25, 1994, and rebuttal briefs no later than March 30, 1994. In accordance with 19 CFR 355.38(b), we will hold a public hearing, if requested by an interested party, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on Monday, April 4, 1994, at 1 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 355.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–1779 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–091]

Large Electric Motors From Japan; Amendment to Notice of Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Amendment to notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is correcting its December 27, 1993 notice of intent to revoke the antidumping duty order on large electric motors from Japan.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: On December 27, 1993, the Department of Commerce (the Department) published a notice of intent to revoke the antidumping duty order on large electric motors from Japan. Two clerical errors appeared in that notice with regard to the deadline for filing objections to the revocation of this order. As a result, the Department is making amendments to that notice. The second paragraph of the summary section is being amended to read as follows:

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from January 27, 1994.

The first paragraph of the section titled "opportunity to object" is being amended to read as follows:

No later than thirty days from January 27, 1994, domestic interested parties as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations may object to the Department's intent to revoke this antidumping duty order.

The third paragraph of the section titled "opportunity to object" is being amended to read as follows:

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from January 27, 1994, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 GFR 353.25(d).

Dated: January 21, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–1778 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–004]

Staples and Staple Machines From Sweden; Amendment to Notice of Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration.

ACTION: Amendment to notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is correcting its December 27, 1993 notice of intent to revoke the antidumping duty order on staples and staple machines from Sweden.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Kim Moore or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: On December 27, 1993, the Department of Commerce (the Department) published a notice of intent to revoke the antidumping duty order on staples and staple machines from Sweden. A clerical error appeared in that notice with regard to the deadline for filing objections to the revocation of this order. As a result, the Department is making amendments to that notice. The second paragraph of the summary section is being amended to read as follows:

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from January 27, 1994.

The first paragraph of the section titled "opportunity to object" is being amended to read as follows:

No later than thirty days from Jaunary 27, 1994, domestic interested parties as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations may object to the Department's intent to revoke this antidumping duty order.

The third paragraph of the section titled "opportunity to object" is being amended to read as follows:

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from January 27, 1994, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 21, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–1777 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–825, A–533–810, A–475–813, A–588–833 and A–469–805]

Initiation of Antidumping Duty Investigations: Stainless Steel Bar From Brazil, India, Italy, Japan and Spain

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

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1756, or (202) 482–3965.

INITIATION OF INVESTIGATIONS:

The Petitions

On December 30, 1993, we received petitions filed in proper form by five producers of stainless steel bar (AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Slater Steels Corporation and Talley Metals Technology, Inc.) and one labor union (United Steelworkers of America, AFL–CIO/CLC) (collectively, petitioners). On January 4, 1994, and January 7, 1994, Electralloy Corp. and the Crucible Specialty Metals Division of the Crucible Materials Corp., respectively, notified the Department that they are also petitioners in these investigations. In accordance with 19 CFR 353.12, the petitioners allege that imports of stainless steel bar from Brazil, India, Italy, Japan and Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under sections 771(9)(C) and 771(9)(D) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for.

or opposition to, these petitions, it should file a written notification with the Acting Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Period of Investigation

The period of investigation is July 1, 1993 to December 31, 1993.

Scope of Investigations

For purposes of these investigations, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to these investigations is currently classifiable under subheadings 7222.10.00, 7222.20.00 and 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

For purposes of these initiations we are considering the subject merchandise to be one class or kind of merchandise. We invite interested parties to comment on this issue by March 25, 1994.

United States Price and Foreign Market Value

Brazil

Petitioners based United States price (USP) on January–March 1993 invoices issued by the U.S. subsidiary of Acos Villares SA (Villares), a Brazilian producer of stainless steel bar, to an unrelated U.S. customer. Since USP was based on C&F terms of sale, petitioners deducted from USP amounts for U.S. duty, ocean freight, marine insurance, and harbor maintenance and U.S. merchandise processing fees.

Petitioners used Villares' delivered home market prices as the basis for FMV. These prices and related expenses were contained in a market research report. FMV was based on actual tax-exclusive, May–June 1993 delivered sales prices of Villares to unrelated customers in Brazil. Petitioners deducted from FMV an amount for inland freight.

Petitioners indicate that the home market price used for FMV was reported in U.S. dollars, thus taking into account Brazil's hyperinflationary economy.

Based on a comparison of USP to FMV, the dumping margin alleged by petitioners for stainless steel bar from Brazil is 19.43 percent.

India

Petitioners calculated USP based on two different methodologies. First, petitioners obtained a July 1993 U.S. price quote for stainless steel bar from India to an unrelated U.S. customer. Since the prices were quoted C&F for delivery to the east or west coast of the United States, petitioners deducted from USP amounts for import duties, ocean freight, marine insurance, and harbor maintenance and U.S. merchandise processing fees.

Petitioners calculated a second weighted-average USP using the average import values of stainless steel bar from India for August and September 1993. The unit values were derived from U.S. Department of Commerce import statistics.

Petitioners used Indian home market prices for stainless steel bar from Mukand Ltd., the largest stainless steel bar producer in India, as the basis for FMV. These prices were contained in a market research report. Petitioners deducted from these prices taxes, insurance, freight, and a distributor's margin based on information in the market research report. Because the comparison of USP and FMV involved non-identical merchandise, petitioners made an adjustment for differences in merchandise based on information contained in the market research report.

For purposes of this initiation, we have accepted petitioners' calculation of USP based on the first methodology. Accordingly, the range of dumping margins of stainless steel bar from India based on a comparison of USP to FMV alleged by petitioners under this methodology is 11.26 to 21.02 percent.

Italy

Petitioners based USP on price quotations for U.S. sales made by Cogne, an Italian producer of stainless steel bar, to an unrelated U.S. customer. Since these USPs were quoted FOB duty paid, petitioners deducted the applicable import duties.

Petitioners calculated FMV using two methodologies. First, petitioners used Cogne's delivered home market prices as the basis for FMV. These prices were contained in a market research report. Petitioners deducted from these prices inland freight and insurance based on information contained in the same report.

Second, petitioners based FMV on constructed value (CV). Petitioners used CV because they alleged that Cogne's home market sales are being made at prices below the cost of production (COP). Petitioners also allege that another Italian company, Bolzano, is making home market sales of stainless steel bar at prices below the COP. These allegations are based on a comparison of home market prices for Cogne and Bolzano, obtained from the market research report, with COP. COP was based on the COP of an efficient U.S. producer of stainless steel bar, adjusted for known differences in costs between the United States and Italy. Where petitioners calculated CV, they used the COP derived from this U.S. producer and added the statutory minimum of eight percent for profit.

The Department is initiating COP investigations for the two companies where petitioners provided company-specific home market prices, contingent upon whether these companies become respondents in this investigation. The Department is not initiating COP investigations for those companies and exporters where petitioners did not provide company-specific home market prices.

Petitioners allege a price-to-price dumping margin for stainless steel bar from Italy of 15.15 percent. Petitioners allege a price-to-CV dumping margin of 157.03 percent.

Japan

Petitioners based USP on June 1993 sales invoices from Daido Steel Sheet Corporation (Daido), a Japanese producer of stainless steel bar, to an

unrelated U.S. customer. Since the USPs were quoted ex-dock, duty paid, Los Angeles, petitioners deducted from USP amounts for U.S. duty, ocean freight, marine insurance, harbor maintenance and U.S. merchandise processing fees.

Petitioners used Daido's delivered May–June 1993 home market sales prices as the basis for FMV. These prices were contained in a market research report. To calculate an ex-factory price, except for credit, petitioners used expense information from the market research report. For credit, petitioners used the rate in effect in Japan for March 1993 as reported in the International Financial Statistics, July 1993. Petitioners deducted from FMV an amount for inland freight and insurance, trade discounts, rebates and sales promotion expenses, advertising and warranties. Petitioners made circumstance-of-sale adjustments for credit and packing.

Based on a comparison of USP to FMV, the dumping margins alleged by petitioners for stainless steel bar from Japan range from 48.00 to 61.47 percent.

Spain

Petitioners based USP on a September 1993 price quote for U.S. sales made by Acenor, a Spanish producer of stainless steel bar, to an unrelated U.S. company. Since USP was quoted on a direct mill delivery basis, petitioners deducted the applicable import duties, ocean freight, marine insurance, harbor maintenance and U.S. merchandise processing fees.

Petitioners calculated FMV using two methodologies. First, petitioners used Acenor's delivered home market prices as the basis for FMV. These prices were contained in a market research report. Petitioners deducted inland freight from FMV using information contained in the same report.

Second, petitioners based FMV on CV because they alleged that Acenor's home market sales are being made at prices below the COP. Petitioners also allege that another Spanish company, Roldan, is making home market sales of stainless steel bar at prices below the COP. These allegations are based on a comparison of home market prices for Acenor and Roldan, obtained from the market research report, with COP. COP was based on the COP of an efficient U.S. producer, adjusted for known differences in costs between the United States and Spain. Where petitioners calculated CV, they used the COP from this producer and added the statutory minimum of eight percent for profit.

The Department is initiating COP investigations for the two companies where petitioners provided company-specific home market prices, contingent upon whether these companies become respondents in this investigation. The Department is not initiating COP investigations for those companies and exporters where petitioners did not provide company-specific home market prices.

Petitioners allege a price-to-price dumping margin for stainless steel bar from Spain of 38.82 percent. Petitioners allege a price-to-CV dumping margin of 144.88 percent.

Initiation of Investigations

We have examined the petitions on stainless steel bar from Brazil, India, Italy, Japan and Spain, and have found that the petitions meet the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of stainless steel bar from Brazil, India, Italy, Japan and Spain are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by February 14, 1994, whether there is a reasonable indication that imports of stainless steel bar from Brazil, India, Italy, Japan and Spain are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination on any one of these investigations will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: January 19, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–1776 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Corrected Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Corrections to notice of decision of panel.

SUMMARY: On December 14, 1993, the Binational Panel issued its decision in the review of the Final Affirmative Countervailing Duty Determination on Remand made by the Department of Commerce, International Trade Administration, Import Administration, respecting Pure Magnesium and Alloy Magnesium from Canada, Secretariat File No. USA–92–1904–03. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Background

On August 16, 1993, the Binational Panel remanded the final determination to the Department of Commerce for action not inconsistent with the Panel's decision as follows:

Commerce was asked to reconsider the exercise of its statutory discretion as to whether its disproportionality analysis should be conducted on an enterprise or industry basis, and provide the Panel a cogent explanation why it exercised its discretion in a given manner; and

Concerning the appropriate allocation period for grants given to Norsk Hydro for the purchase of pollution control

equipment, Commerce was asked to consider the IRS tables and the producer records, in a manner that satisfies the standard articulated in the *IPSCO* case of "an allocation period which will accurately reflect the commercial and competitive benefit received by the plaintiffs in this case," and to provide a satisfactory explanation for its reasoning in support of whatever decision it reaches.

On September 15, 1993, the Department of Commerce issued its Redetermination on Remand.

Panel Decision

On December 14, 1993, the Panel affirmed the redetermination in all respects.

Dated: January 18, 1994.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 94–1774 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of Panel Review of the final affirmative determination made by the U.S. Department of Commerce, International Trade Administration, Import Administration, in an affirmative countervailing duty determination respecting Pure and Alloy Magnesium from Canada, Secretariat File No. USA–92–1904–03.

SUMMARY: Pursuant to the Memorandum Opinion and Order of the Binational Panel dated December 14, 1993, affirming the determination on remand, the Panel Review of the final determination described above was completed on January 14, 1994.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On August 16, 1993, the Binational Panel issued a decision which affirmed in part and remanded in part the final affirmative countervailing duty determination of the United States Department of Commerce, International Trade Administration ("ITA") concerning Pure and Alloy Magnesium from Canada. The panel remanded the ITA's determination in two respects:

(1) For the ITA to explain why, in determining the specificity of the SDI program subsidy, the ITA conducted its "disproportionality" analysis on an enterprise-by-enterprise basis rather than on an industry-by-industry basis; and

(2) For the ITA to explain why its use of Internal Revenue Service (IRS) depreciation tables for the useful life of equipment in the industry accurately reflects the commercial and competitive benefits received by Norsk Hydro Canada from grants it received for the purchase of pollution control equipment.

The panel instructed ITA to provide its redetermination on remand within 30 days (by Sepember 16).

The ITA submitted its redetermination on remand on September 15, 1993, which the Panel Affirmed in all respects. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Order, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists discharged from their duties effective January 14, 1994.

Dated: January 18, 1994.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 94–1775 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of scientific research permit No. 877 (P321B).

SUMMARY: Notice is hereby given that Mr. Sherman C. Jones, III, 4001 Santa Maria Drive, Chesapeake, VA 23321, has been issued a permit to take Atlantic bottlenose dolphins (*Turisops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141).

SUPPLEMENTARY INFORMATION: On December 7, 1992, notice was published in the **Federal Register** (57 FR 59980) that a request for a scientific research permit to take Atlantic bottlenose dolphins (*Trusiops truncatus*) has been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 18, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–1689 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

January 24, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending previous limits and establishing new limits.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated January 17, 1994 between the Governments of the United States and the People's Republic of China agreement was reached to establish a new bilateral textile and apparel agreement for three consecutive one-year periods, beginning on January 1, 1994 and extending through December 31, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994.

The public should also be aware that the two Governments agreed to establish limits on wearing apparel containing 70 percent or more by weight of silk. These limits will be implemented on March 1, 1994. A notice will appear in the **Federal Register** announcing the limits.

It should be noted that CITA reserves the right under the bilateral agreement to deny entry permanently to goods which have been overshipped, or to allow entry and charge to the following restraint period merchandise exported during a prior agreement period which exceeds the restraint limit(s) estblished for that period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 1385, published on January 10, 1994.

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 MOU, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 24, 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 January 5, 1994, by the Chairman of the 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 China and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on January 27, 1994, you are directed to amend the limits established in the January 5, 1994 directive, pursuant to a Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China. Category 643, currently in Group II; Categories 362 and 666, currently in Group III; and Categories 644/844 and 836, currently in Group IV, shall be moved to the new Group I. Import charges already made to 643, 362, 666, 644/844 and 836 shall be deducted and charged to the corresponding categories in Group I.

Import charges already made to Categories 200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C, 359–V, 360, 361, 363, 369–D, 369–H, 369–L, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–642, 645/646, 647–652, 659–C, 659–H, 659–S, 669–P, 670–L, 831, 833, 835, 840, 842 and 845–847 shall be charged to the new Group I limit.

Category	Twelve-month restraint limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C, 359–V, 360–363, 369–D, 369–H, 369–L, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C, 659–H, 659–S, 666, 669–P, 670–L, 831, 833, 835, 836, 840, 842 and 845–847 as a group.	1,403,409,511 square meters equivalent.
Sublevels in Group I	
200	618,088 kilograms.
218	10,559,192 square meters.
219	2,146,517 square meters.
226	9,746,751 square meters.
237	1,660,392 dozen.
239	2,655,482 kilograms.
300/301	3,592,387 kilograms.
313	39,772,262 square meters.
314	45,253,279 square meters.
315	155,204,414 square meters.
317/326	18,610,046 square meters of which not more than 3,560,468 square meters shall be in Category 326.
331	4,719,281 dozen pairs.
333	85,511 dozen.
334	296,498 dozen.
335	371,309 dozen.
336	150,706 dozen.
338/339	2,346,869 dozen of which not more than 1,781,530 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338–S/339–S [2].
340	804,456 dozen of which not more than 402,228 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340–Z [3].
341	642,915 dozen of which not more than 385,749 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341–Y [4].
342	251,173 dozen.
345	127,749 dozen.
347/348	2,395,060 dozen.
350	145,496 dozen.
351	472,224 dozen.
352	1,783,287 dozen.
359–C [5]	527,545 kilograms.
359–V [6]	783,498 kilograms.
360	6,764,306 numbers of which not more than 4,613,910 numbers shall be in Category 360–P [7].
361	3,819,599 numbers.
362	6,910,440 numbers.
363	29,098,315 numbers.
369–D [8]	4,306,902 kilograms.
369–H [9]	4,404,908 kilograms.
369–L [10]	2,894,558 kilograms.
410	1,920,130 square meters of which not more than 1,539,191 square meters shall be Category 410–A [11] and not more than 1,539,191 square meters shall be in Category 410–B [12].
433	22,596 dozen.
434	12,875 dozen.
435	23,648 dozen.
436	14,714 dozen.
438	25,749 dozen.

Category	Twelve-month restraint limit [1]
440	36,786 dozen of which not more than 21,020 dozen shall be in Category 440–M [13].
442	40,990 dozen.
443	132,427 numbers.
444	196,874 numbers.
445/446	283,772 dozen.
447	76,530 dozen.
448	21,513 dozen.
607	2,892,108 kilograms.
611	4,943,434 square meters.
613	6,785,106 square meters.
614	10,662,308 square meters.
615	22,196,988 square meters.
617	15,508,812 square meters.
631	1,127,344 dozen pairs.
633	51,419 dozen.
634	559,400 dozen.
635	584,341 dozen.
636	515,393 dozen.
638/639	2,318,570 dozen.
640	1,423,598 dozen.
641	1,281,136 dozen.
642	294,167 dozen.
643	470,948 numbers.
644/844	3,405,840 numbers.
645/646	816,877 dozen.
647	1,479,777 dozen.
648	1,057,291 dozen.
649	826,108 dozen.
650	103,859 dozen.
651	707,831 dozen of which not more than 124,619 dozen shall be in Category 651–B [14].
652	2,368,823 dozen.
659–C [15]	374,733 kilograms.
659–H [16]	2,566,655 kilograms.
659–S [17]	552,329 kilograms.
666	3,245,445 kilograms.
669–P [18]	1,802,816 kilograms.
670–L [19]	14,348,476 kilograms.
831	464,512 dozen pairs.
833	24,585 dozen.
835	116,139 dozen.
836	251,304 dozen.
840	451,786 dozen.
842	245,851 dozen.
845	2,410,931 dozen.
846	162,299 dozen.
847	1,198,524 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [20], 431, 432, 439, 459, 630,632, 653, 654 and 659–O [21], as a group.	118,745,279 square meters equivalent.
Group III	
201, 220, 222–225, 227, 229, 369–O [22], 400, 414,464, 465, 469, 600, 603, 604–O [23], 606, 618–622, 624–629, 665, 669–O [24] and 670–O [25], as a group.	250,757,880 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	10,602,249 square meters equivalent.
Levels not in a Group	
369–S [26]	607,725 kilograms.
863–S [27]	8,448,292 numbers.
870	28,851,495 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Categories 338–S/339–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[5] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[6] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[7] Category 360–P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[8] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[9] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[10] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[11] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[12] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[13] Category 440–M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[14] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[15] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[16] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[17] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[18] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[19] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[20] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[22] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[23] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[24] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[25] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[26] Category 369–S: only HTS number 6307.10.2005.

[27] Category 863–S: only HTS number 6307.10.2015.

Imports charged to these category limits for the periods January 1, 1993 through December 31, 1993, February 24, 1993 through December 31, 1993 (Categories 644/844) and October 29, 1993 through December 31, 1993 (Category 870) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–1861 Filed 1–26–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

Title: Vocational/Technical (VOTEC) Market Analysis Surveys

Type of Request: New collection

Number of Respondents: 21,000

Responses Per Respondent: 1

Annual Responses: 21,000

Average Burden Per Response: 40.7 minutes

Annual Burden Hours: 14,250

Needs and Uses: The Army is investigating the feasibility of filling part of its training requirements from vocational graduate resources. If the Army can recruit applicants who are already trained in specific career areas, it can save training resources and provide units with trained soldiers faster. This study investigates the propensity of vocational students to enlist, as well as the incentives required to induce them to enlist.

Affected Public: Businesses of other for-profit, Small businesses or organizations

Frequency: One time

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

Dated: January 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–1761 Filed 1–27–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133B]

The National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1994

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 17, 1993 a notice inviting applications for new awards under certain programs for fiscal year 1994 was published in the **Federal Register** at 58 FR 66228. This notice corrects the estimated average size of awards for the funding priority on Rehabilitation of Persons with Long-term Mental Illness.

On page 66299, the table should read that the estimated average size of awards for the funding priority on Rehabilitation of Persons with Long-term Mental Illness = $650,000.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8877.

Program Authority: 29 U.S.C. 760–76.

Dated: January 21, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–1719 Filed 1–26–94; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Commercialization Projects for Renewable Energy Technologies

AGENCY: Department of Energy.

ACTION: Request for Project Summaries and Notice of Solicitation for Financial Assistance Applications Number DE–PS02–94CH10595.

SUMMARY: The U.S. Department of Energy (DOE), through the Commercialization Ventures Program, announces its intention to issue a competitive solicitation and make multiple (at least two (2)) awards to accelerate commercialization of emerging renewable energy (RE) technologies or innovative applications of existing RE technologies. This action is subject to the DOE Financial Assistance Rules, which can be found in Title 10 of the Code of Federal Regulations (10 CFR part 600).

AVAILABILITY OF THE SOLICITATION: To obtain a copy of the solicitation once it is issued on or about March 1, 1994, write to the U.S. Department of Energy's Golden Field Office, 1617 Cole Blvd., Golden, CO, 80401, Attn: Mr. John Meeker, Contract Specialist. Only written requests for the solicitation will be honored. For convenience, requests for the solicitation may be faxed to Mr. Meeker at (303) 275–4790.

SUPPLEMENTARY INFORMATION: In accordance with the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Act), as amended by the Energy Policy Act of 1992, the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, is seeking preliminary information from sources able to demonstrate the commercial potential of emerging renewable energy (RE) technologies or innovative applications of existing RE technologies to participate in a competitive solicitation for DOE financial assistance In creating the Act Congress stated, "what is needed is a partnership between the Federal Government, domestic manufacturers, marketers, and potential users of renewable energy * * * technologies." Without this partnership, the availability of these technologies for domestic industry could be substantially delayed."

As defined in the Act, an emerging RE technology is one that has already been proven to work, but which has not been commercialized or has been limited to sub-commercial demonstration or quantities, to restricted or controlled operation, or to only selected applications. Awards under the solicitation will be Grants or Cooperative Agreements (depending on the scope of the project and need for substantial DOE involvement) administered in accordance with 10 CFR 600, DOE's Financial Assistance Rules.

The following are RE areas that DOE will consider for financial assistance under the solicitation:

- Demonstration of the market readiness of an emerging technology in a new application or environment or at a sufficient scale or size likely to encourage private investment in commercial facilities or systems.
- Market introduction activities of a product or service having potentially high energy payoff and/or high replication value by other users.

• Financial support that will reduce risk for, or otherwise enable, private financing of a new venture.

• Financial assistance that will enable private sector investment in new RE manufacturing, evaluation and test, or quality control facilities leading to commercial product introduction.

Projects may include those for the production or delivery of electricity, thermal energy, or other forms of energy using renewable energy technology; or, improvements in, or expansion of, facilities for the manufacture of renewable energy technologies.

Projects selected are expected to include, but are not limited to, the following specific areas of renewable energy technology:

(A) Conversion of cellulosic biomass to liquid fuels.

(B) Ethanol and ethanol byproduct processes.

(C) Direct combustion or gasification of biomass.

(D) Biofuels energy systems.

(E) Photovoltaics, including utility scale and remote applications.

(F) Solar thermal, including solar water heating.

(G) Wind energy.

(H) High temperature and low temperature geothermal energy.

It is anticipated that requirements of the solicitation will include that: (1) All teams or applicants in projects selected shall include at least one for-profit entity; (2) projects selected shall require manufacture and reproduction substantially within the United States for any invention or product that may result from the project; (3) projects selected must demonstrate a significant need for federal financial assistance to commercialize or speed commercialization of the technology.

In general, the solicitation will require cost sharing by applicants of at least 50% of the total project costs in order to receive an award under the solicitation. All participant cost sharing must come from non-Federal funding sources. Currently, it is anticipated that total DOE funding in the amount of $10 million will be available for all awards under the solicitation.

The solicitation will be issued on or about March 1, 1994, and will contain detailed information on funding, cost sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due 45 days after solicitation release. However, applications are encouraged to be submitted prior to the closing date. All responsible sources are encouraged to submit an application and all applications will be considered.

Project Summary

While not a requirement, DOE strongly encourages all parties interested in applying for financial assistance under the Commercialization Ventures Program to respond to this notice by providing DOE with a short summary of the prospective project. The primary use of these summaries by DOE will be to ensure that the overall Program adequately addresses industry needs. In addition, DOE will review individual summaries in order to advise potential applicants on whether their proposed project appears to fit within the overall objectives of the Commercialization Venture Program. DOE will not evaluate individual project summaries on whether they meet any criteria for eventual award. All potential applicants who submit a project summary will be advised in writing of whether the summary would seem to fit within the Program or whether the summary seems to present a project that is unsuitable for the Program. If the latter, the potential applicant will be advised of the reasons the potential project may be unsuitable. Project summaries submitted in response to this notice should be received no later than 30 calendar days after the appearance of this notification in order to be considered by DOE in formulating the solicitation.

Failure to respond or furnish the information requested will not disqualify anyone from competing when the competitive solicitation is issued. However, the distribution list for the solicitation will be generated as a result of responses to this notice; therefore, all interested parties should respond in some manner, if only by furnishing their name, address and telephone number.

Project summaries are not expected to include detailed plans. Information contained in the responses will not be released to the public; however, if proprietary information is included, this should be marked on the applicable pages. Summaries should be limited to eight (8) pages and include the following information:

1. Name, address, telephone and fax numbers of the primary contact person.

2. The potential participants, proposed roles, key personnel and qualifications.

3. A concise description of the project including discussion of the following: (a.) product concept; (b.) development status; (c.) where the technology has been demonstrated; (d.) how the technology works; (e.) technical viability, reliability, and manufacturability, including the identity of a potential manufacturing partner, if known and; (f.) the estimated cost per kWh or MMBTU the project will produce and the estimated cost once the technology is fully commercialized.

4. A discussion of the potential market for the product or project.

5. A discussion of the potential benefits of the product or project, such as environmental, energy savings and/or energy supply contributions.

6. The total estimated cost of the project, the percentage of cost sharing and the potential source(s) of cost sharing.

7. Length of time to fully construct or implement the project.

Questions

Respondents are encouraged to submit any questions about the Program discussed in this announcement as part of their response. Questions should be submitted as an attachment to the summary, if a project summary is furnished, and will not be counted against the eight (8) page limit.

Submit four (4) copies of your project summary or other response to John Meeker at the above address within 30 days of the date of this notice.

Issued in Chicago, Illinois, on January 7, 1994.

Alan E. Smith,

Director, Information Management and Support Division.

[FR Doc. 94–1772 Filed 1–26–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–10; Global Change Research With Unmanned Aerospace Vehicles

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE) hereby announces its interest in receiving applications to support an experimental program in global climate change, i.e., the measurement and analysis of radiation and cloud/radiation effects. This program is being pursued in support of the U.S. Global Change Research Program (USGCRP) and supports the goals of the DOE Atmospheric Radiation Measurement (ARM) Program. Funding for this effort comes from both the Department of Defense (DoD) Strategic Environmental

Research and Development Program (SERDP) and from DOE. In the initial phases of this effort leased Unmanned Aerospace Vehicles (UAV) will be instrumented and flights will be made in conjunction with ARM site activities. These initial missions will emphasize measurement of the vertical flux profile in the troposphere and the use of UAV-based measurements to calibrate satellite derived fluxes. Applications are sought to use the UAV-based data, in conjunction with ARM site and other data, to address key issues in the radiative heating of the atmosphere; for the use, modification, or development of UAV-compatible instruments for such radiation and cloud studies; to support instrument development; and for data analysis which support integration of the UAV-borne instrument data with ARM site and other data.

These efforts are intended to supply information for the global change scientific community and satisfy DoD SERDP goals in Global Environmental Change.

DATES: Formal application submitted in response to this notice must be received by March 28, 1994, to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 94–10 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, D.C. 20585, ATTN: Program Notice 94–10. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Patrick Crowley, Environmental Sciences Division, Office of Health and Environmental Research, U.S. Department of Energy, Washington, DC 20585, telephone (301) 903–3069.

SUPPLEMENTARY INFORMATION: The purpose of the ARM program is to improve the treatment of radiation and clouds in the models used to predict future climate, particularly the General Circulation Models (GCM). (The role of clouds in climate change is the highest science priority in the USGCRP.) The ARM program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM Program is an experimental testbed for the study of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of process-level models into climate models. This testbed is called the Clouds and Radiation Testbed (CART). The first ARM CART site began operation in calendar year 1992 with instruments spread over approximately 60,000 square kilometers centered in Lamont, Oklahoma. Sites planned for the Tropical Western Pacific Ocean and the North Slope of Alaska are expected to become operational over the next four years. The present effort supports ARM objectives by providing for instrumentation, collection and analysis of data on ARM relevant phenomena using UAVs as instrument platforms. The desirability of UAVs for this research lies in their potential to remain on station or make long range tracks for extended periods (>48 hrs) and/or to fly at altitudes slightly above the top of the troposphere. These advantages are achieved without concomitant risk to pilot or crew.

The altitudes of interest for the present effort extend from about one thousand feet to the top of the troposphere. The lower altitude is governed by safety and control factors and the upper altitude is expected to be adequate for the study of most tropospheric and radiation budget investigations.

Although mission schedules are currently being developed, they are expected to be flexible—three UAV flight missions are anticipated in the next 18 months. The first three missions will be over the Southern Great Plains ARM Site. These early missions will emphasize measurement of the vertical radiation flux profile and the use of UAV-borne instruments to calibrate satellite-derived measurements such as the top-of-the-atmosphere flux. The initial payloads include up and down-looking, broadband solar and infrared, hemispherical flux radiometers; a nadir viewing spectral radiometer covering the 0.4 to 4.0 microns; and a meteorology package (temperature, pressure, and water vapor measurements). {The goal of the first missions is measurement of the vertical radiation flux profile and they will be conducted with instruments being integrated into payloads presently; these instruments include broad-band radiometers, a narrow band radiometer, and a meteorology package (temperature, pressure and water vapor measurement).} Later missions will be more flexible as to goals, mission profiles, and instrument payload. This notice requests applications to support two categories of effort; analysis of data and development of UAV instruments in pursuit of the experimental goals.

Data analysis efforts should focus on making maximum use of UAV-derived data, in conjunction with CART and other data sources, to address key radiative heating issues and to provide calibration/validation of satellite derived data products. In addition, the investigators funded for these efforts are expected to assist in planning the future missions to include locations, mission profiles, and instrument complement. Mission planning will be conducted by these investigators, UAV instrument developers and interested members of the ARM science team, and the UAV mission planning group.

Proposed instruments for the UAV missions should provide data relevant and of unique value to the mission's objectives. Instruments should be compatible with use on a small UAV as part of a multi-instrument payload. Typically they should weigh less than 30 kg, draw less than 100 W, and occupy less than 1.01m^3. Instruments must be capable of autonomous operation fully exposed to the ambient atmosphere. The UAV payload interface will provide power to the instrument through a DC Bus (voltage negotiable) and will also provide for telemetering the data stream to the ground. Applications for instrument development should include optimum conditions for taking data from the proposed instrument as well as requirements for other instruments on-board or required from other platforms (e.g., the ARM site). The proposed instruments will be subject to a review at six months after the award. A decision on which instruments to bring to operational capability will be made at the six month review.

It is anticipated that approximately $3.5M will be available for awards for these activities contingent on availability of appropriated funds. Multiple year funding is expected, also contingent upon the availability of funds. The allocation of funds will depend on the number and quality of applications received. Typical Environmental Sciences Division awards are $200,000 per year, but range between $50,000 and $750,000.

The technical portions of the applications should not exceed twenty-five (25) double-spaced pages, and should be accompanied by an abstract of not more than two paragraphs.

Information on the development and submission of applications, eligibility,

limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER-74 (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903-4902

The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC, on January 14, 1994.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94-1771 Filed 1-26-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER93-313-000, et al.]

Niagara Mohawk Power Corp., et al.; Electric Rate and Corporate Regulation Filings

January 14, 1994.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Docket No. ER93-313-000]

Take notice that on January 10, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an amendment to its Power Sales Tariff which is pending acceptance with the Commission. The Tariff provides for sales of system capacity and/or energy or resource capacity and/or energy. The proposed Tariff requires interested purchasers to enter into a Service Agreement with Niagara Mohawk before transactions may commence under this Tariff.

Niagara Mohawk requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. Information filed in support of the Tariff includes cost support for Niagara Mohawk's tariff ceiling rates and pricing terms that allow for the capacity and energy changes to be pro-rated for the duration of each sale. A copy of this filing has been served upon the New York State Public Service Commission.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. East Texas Electric Cooperative, Inc.

[Docket No. ER94-891-000]

Take notice that on January 6, 1994, East Texas Electric Cooperative, Inc., tendered for filing an initial proposed tariff to be designated ETEC-1. The proposed tariff shall facilitate the pooling of the purchased power resources of Sam Rayburn G&T Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.

The initial tariff proposal is designed to capture economies of scale among the three members of ETEC in their purchased power acquisition activities.

Copies of the filing were served upon the public utility's customers, and the Public Utilities Commission of Texas.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corp.

[Docket No. ER94-892-000]

Take notice that on January 7, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures, 18 CFR 35.13 (1993), as a change in rate schedule, an agreement with Rochester Gas and Electric Corporation (RGE). The agreement supplements NYSEG Rate Schedule FERC No. 107 and provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to RGE and RGE will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on January 8, 1994, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and RGE.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Co.

[Docket No. ER94-893-000]

Take notice that on January 10, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Pasadena (Pasadena).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of March, 1994 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Pasadena.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Co. (Minnesota)

[Docket No. ER94-894-000]

Take notice that on January 6, 1994, Northern States Power Company (Minnesota) tendered for filing Amendment No. 1 to the Diversity Exchange Agreement dated June 11, 1985.

NSP requests that the Commission accept for filing this amendment effective as of May, 1993.

Based upon the parties' mutual agreement and in accordance with the Commission's Order In Docket No. PL93-2-002 which grants an amnesty period until December 31, 1993, NSP requests that the Commission accept this Agreement. NSP requests waiver of the Commission's notice requirements under Part 35 so the Agreement may be effective as of the date requested. NSP also requests waiver of any other applicable filing requirements under the Commission's Rules and Regulations as may be necessary to accept the Agreement for filing on the date requested.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Co.

[Docket No. ER94-895-000]

Take notice that on January 7, 1994, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial Rate Schedule to provide interruptible transmission service to the Atlantic City Electric Company (AE). The service provides for the delivery of non-firm electric power and associated energy transactions between any investor-owned utility interconnected with the PSE&G high voltage transmission system and AE.

PSE&G requests a waiver of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be made effective within sixty (60) days of the date of this filing.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Co.

[Docket No. ER94-896-000]

Take notice that on January 6, 1994, Florida Power & Light Company (FPL), tendered for filing Amendment Number Four to the Restated and Revised Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (FMPA). FPL states that Amendment Number Four amends the Restated and Revised Transmission Agreement in order that FPL may provide transmission service for additional FMPA resources in accordance with the provisions of the Restated and Revised Transmission Agreement. FPL requests that Amendment Number Four be made effective January 7, 1994. FPL states that a copy of the filing was served on the Florida Municipal Power Agency and the Florida Public Service Commission.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Co.

[Docket No. ER94-899-000]

Take notice that on January 11, 1994, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to the City of St. Cloud Electric Utilities (St. Cloud) of capacity and energy from Tampa Electric's Big Bend Station. The tendered Letter Agreement provides St. Cloud with an opportunity to increase the committed reserved capacity, and for the sale of supplemental capacity and energy.

Tampa Electric proposes an effective date of March 1, 1994, for the Letter Agreement, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-1697 Filed 1-26-94; 8:45 am]

BILLING CODE 6717-01-P

Office of Energy Efficiency and Renewable Energy

National Industrial Competitiveness Through Energy, Environment and Economics (NICE³) Grants

AGENCIES: Department of Energy (DOE) and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Waste Reduction of the Department of Energy and the Pollution Prevention Division of the Environmental Protection Agency are jointly funding a State Grant Program entitled National Industrial Competitiveness through Energy, Environment and Economics (NICE³). The goals of the NICE³ Program are (1) to foster new industrial processes and/or equipment that can significantly reduce the generation of wastes in industry, improve energy efficiency and enhance the competitiveness of U.S. industry, (2) to encourage collaborative efforts among State agencies responsible for energy, environment and economic issues together with private sector industrial partners. The solicitation will be available February 10, 1994.

DATES: Applications must be received by March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Eric Hass and/or Bill Ives at U.S. Department of Energy Golden Operations Office (NREL), 1617 Cole Boulevard, Golden, Colorado 80401—Telephone (303) 275-4728—for referral to appropriate DOE Support Office.

SUPPLEMENTARY INFORMATION: In 1993 Department of Energy contributed $1,500,000 and Environmental Protection Agency contributed $900,000. Eight projects were funded.

Availability of Fiscal Year 94 funds. With this publication, DOE and EPA are announcing the availability of up to $3.2 million in grant/cooperative agreement funds for fiscal year 1994. This fourth round of awards will be made through a competitive process. In response to the solicitation, a State agency may include up to 10 percent, not to exceed $25,000 per project, for State agency program support. Size of grants including State agency program support may range up to $425,000. Projects may cover a period of up to 3 years.

Restricted Eligibility: Eligible applicants for purposes of funding under this program include the 50 States, the District of Columbia, the U.S Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States, specifically, State energy, environmental or economic agencies. For convenience, the term State in this notice refers to all eligible State applicants. Local governments, State and private universities, private non-profits, private businesses, and individuals, who are not eligible as direct applicants, must work with State agencies in developing projects. DOE and EPA strongly encourage and require this type of cooperative arrangement in support of program goals.

The Catalogue of Federal Domestic Assistance number assigned to this program is 81.105. The $3.2 million in Federal funds are provided by DOE and EPA. Cost sharing is required by all participants. The Federal Government will provide up to 50% of the funds for the Project. The remaining funds must be provided by the eligible applicants and/or cooperating project participants. Cost-sharing beyond the 50 percent match is desirable. In addition to direct financial contributions, cost-sharing can include beneficial services or items, such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles. Industrial partners are required for a proposal to be considered responsive to this announcement and eligible for grant consideration. A State agency application is required for a proposal to be responsive.

Evaluation Criteria

The first tier evaluation will occur at the appropriate regional DOE Support Office. Proposals will receive a final review by a panel comprised of members representing DOE's Office of Energy Efficiency and Renewable Energy, the Environmental Protection Agency, and DOE and EPA field offices. More detailed information is available from U.S. Department of Energy Golden Operations Office at (303) 275-4778.

DOE/EPA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice.

Dated: January 24, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–1770 Filed 1–26–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2456]

Public Service of New Hampshire; Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding[1]. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the New Hampshire State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare a programmatic agreement for managing properties included on, or eligible for inclusion in, the National Register of Historic Places at Project No. 2456.

The programmatic agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13(e)). The Commission's section 106 requirements for the above project would be fulfilled through a programmatic agreement for comments under section 106.

Public Service of New Hampshire, as a prospective licensee for the project, is being asked to participate in the consultation and is being invited to sign as a concurring party to the programmatic agreement.

[1] 18 CFR 385.2010.

For purposes of commenting on the programmatic agreement we propose to restrict the service list for Project No. 2456 as follows:

Mr. R.G. Chevalier, Vice President, Fossil/Hydro Engineering Operations, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270

Ms. Nancy Muller, Director, New Hampshire State Historic Preservation Officer, New Hampshire Division of Historical Resources, P.O. Box 2043, Concord, NH 03302

Advisory Council on Historical Preservation, Eastern Office of Project Review, The Old Post Office Building, suite 809, 1100 Pennsylvania Avenue, NW. Washington, DC 20004

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of Commission (825 N. Capitol St., NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1653 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–890–000]

AES Power Co.; Notice of Filing

January 13, 1994.

Take notice that on January 6, 1994, AES Power Inc. (AESPI) petitioned the Commission for acceptance of AESPI Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. AESPI is a subsidiary of AES Corp. which owns and operates non-utility generating facilities in the U.S. and overseas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 20, 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. 94–1765 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–57–000; Docket No. CP94–59–000 (Not Consolidated)]

Columbia LNG Corp., and Cove Point LNG Co., L.P.; Technical Conference

January 21, 1994.

Take notice that on February 15, 1994, at 10 a.m., the Commission Staff will convene a technical conference on non-environmental issues in the above-captioned proceeding to discuss issues related to the proposal by Columbia LNG Corporation (Columbia LNG) to abandon its service obligations to Columbia Gas Transmission Corporation (Columbia Gas) under Rate Schedule LNG, abandon its certificated transportation service to Washington Gas Light Company under Rate Schedule X–2 and to abandon by transfer to Cove Point LNG Company, L.P. (Cove Point LNG) all of Columbia LNG's certificated facilities located at Cove Point, Calvert County, Maryland and the pipeline extending from the Cove Point Facilities to a point of interconnection with Columbia Gas and CNG Transmission Corporation in Loudoun County, Virginia. Cove Point LNG proposes to recommission the onshore facilities at Cove Point in order to store and vaporize LNG. Additionally, Cove Point LNG proposes to construct a liquefaction unit at Cove Point to liquefy gas for storage and provide firm and interruptible peaking services under a blanket authorization, and has requested blanket construction authorization. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 1st Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status.

For further information contact Horatio A. Cipkus, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, room

7300–L, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–2150.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1663 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94–18–000]

ESBI Energy O&M, Inc.; Application for Commission Determination of Exempt Wholesale Generator Status

January 21, 1994.

On January 14, 1994, ESBI Energy O&M, Inc. (ESBI), a Delaware corporation, whose address is 10235 West Little York, suite 430, Houston, Texas 77040, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

ESBI intends to operate an approximate 399 MW natural gas and oil-fired simple cycle peaking independent power production facility to be located near Hartwell, Hart County, Georgia. The facility is currently under development and will be owned by Hartwell Energy Limited Partnership. Electric energy produced by the facility will be sold to Oglethorpe Power Corporation at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before February 11, 1994, and must be served on the applicant. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1656 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2219–005 Utah]

Garkane Power Association, Inc.; Availability of Environmental Assessment

January 21, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to install a microturbine at the Boulder Creek Project. This project is located on Boulder Creek in Garfield County, Utah. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the action. In the EA, the staff concludes that construction and operation of the microturbine would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1657 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–000]

MIGC, Inc.; Informal Settlement Conference

January 21, 1994.

Take notice than an informal settlement conference will be convened in this proceeding on Thursday, January 27, 1994 (and may be extended until Friday January 28, 1994). The conference will begin at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in room 4010. The purpose of the conference is to explore the possibility of settlement of this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Robert L. Woods at (202) 208–1087 or Russell Mamone at (202) 208-0744.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1660 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG91–1–003]

National Fuel Gas Supply Corp.; Petition for Waiver of Regulations

January 21, 1994.

Take notice that on December 17, 1993, National Fuel Gas Supply Corporation (National) petitioned the Federal Energy Regulatory Commission (Commission) for a waiver of certain of the requirements of Order Nos. 497 *et al.*[1]

National requests that the Commission waive the requirements of Order Nos. 497 *et al.* with respect to National's relationship with National Fuel Gas Distribution Corporation (Distribution), an affiliated local distribution company. National claims that since its restructuring plan became effective on August 1, 1993, Distribution is no longer a sales customer of National. Distribution, which is National's largest single transportation customer, can make off-system sales without triggering the marketing affiliate rules, so long as the gas sold is not transported on National's pipeline system. National requests that the Commission allow Distribution to move gas through National's facilities to a newly created Hug, without triggering the requirements of Order Nos. 497 *et al.*

National further states that copies of this filing were served upon its jurisdictional customers and the Regulatory Commissions of the states of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 4, 1994. Protests will be considered by the Commission in

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497-A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, order on extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497-C, order extending sunset date, 57 FR 9 (January 2, 1992); III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v FERC (affirmed in part and remanded in part), 969 F 2d 1187 (D.C. Cir. 1992), Order No. 497-D, order on remand and extending sunset date, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1658 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–165–000]

OkTex Pipeline Co.; Informal Settlement Conference

January 21, 1994.

Take notice that on January 28, 1994, at 9:30 a.m., an informal settlement conference will be convened in this proceeding at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The parties and the Commission Staff are invited to attend. Persons wishing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214) and have their motion granted.

For additional information contact John Roddy (202) 208–1176 or Anja Clark (202) 208–2034.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1659 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–685–000, Docket Nos. CP93–751–000, CP94–29–000, Docket No. CP93–618–000, Docket Nos. CP93–613–000, CP93–673–000. (Not Consolidated)]

Tuscarora Gas Transmission Co., et al.; Technical Conference

January 21, 1994.

Take notice that on February 10, 1994, at 10 o'clock AM, the Commission staff will convene a technical conference on non-environmental issues in the above captioned proceedings to discuss issues related to the proposals by: (1) Tuscarora Gas Transmission Company (Tuscarora) to construct a new pipeline to serve markets in California and Northern Nevada; (2) Paiute Pipeline Corporation (Paiute) to expand its system to serve markets in California and Northern Nevada; (3) Pacific Gas Transmission Company (PGT) to expand its system for certain customers in the Pacific Northwest, California and Nevada; and (4) Northwest Pipeline Corporation (Northwest) is expanding its system to serve markets in Washington, Oregon, Idaho and Nevada. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 1st Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status.

For further information contact John M. Wood (202) 208–0113 or Horatio A. Cipkus (202 208–2150, Office of Pipeline and Producer Regulation, room 7016, 825 N. Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1654 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Project 2299–024 California]

Turlock and Modesto Irrigation Districts; Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Meeting

January 21, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the licensee's post-licensing filing that proposes to modify the minimum flows from the project reservoir. The intent of the proposed flow modification is to help protect fishery resources (primarily the chinook salmon) in the Tuolumne River. Staff's initial evaluation was issued on December 22, 1993, in a draft environmental assessment (DEA). In the DEA, staff determined that because some of the proposed alternatives could, under certain circumstances, reduce the amount of water available to users of the Hetch Hetchy water supply, some of the proposed alternatives may constitute a major federal action affecting the human environment and recommended preparation of an environmental impact statement.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by staff and considered in the final EIS. Staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final decision.

Scoping Meeting

A scoping meeting will be held on Thursday, February 10, 1994, at 9 a.m. at the Best Western Mallard's Inn in Modesto, California. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The DEA will be considered the initial scoping document. Copies of the DEA are available in the Commission's Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426. Copies of the DEA will also be available at the scoping meeting.

Objectives

At the scoping meeting the staff will: (1) Present environmental issues that are identified for coverage in the EIS; (2) receive input from meeting participants on the issues presented; (3) clarify the significance of issues; (4) identify any additional issues that need treatment in the EIS; and (5) identify those issues that do not merit treatment in the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding that was noticed on December 29, 1992. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before February 24, 1994.

All written correspondence should clearly show on the first page of each document the following caption: New Don Pedro Project, FERC Project No. 2299–024.

Further, please note the Commission's Rules of Practice and Procedure, requiring note entities to file an original and eight copies of any filing with the Commission and parties filing documents, must also serve the documents on each person whose name is on the official service list.

For further information, please contact John A. Schnagl at (202) 219–2661.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–1655 Filed 1–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93-109-000]

Williams Natural Gas Co.; Informal Settlement Conference

January 21, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, January 25, 1994. The conference will begin at 10: a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to explore the possibility of settlement of the above-reference docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Sandra J. Delude or Russell B. Mamone at (202) 208-0744.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-1661 Filed 1-26-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4825-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before February 28, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resources Management

Title: Contractor's Cumulative Claim and Reconciliation (EPA No. 246.05; OMB No. 2030-0016).

Abstract: This ICR is an extension of existing information collection activities required under the Federal Acquisition Regulations (FAR) at 48 CFR 4.804 and 4.805. Under these regulations, EPA contractors completing cost-reimbursement contracts must provide EPA with summary information of all costs incurred in the performance of the contract prior to contract closure. Specifically, using EPA Form 1900-10 or an equivalent format, EPA contractors must provide EPA with summary information on the major expenditures under the contract, such as direct labor, direct material and supplies, equipment, travel, and subcontract costs. There are no recordkeeeping requirements.

This information is used by the EPA to determine the final amount of reimbursable costs to the contractor. The EPA contracting officer reviews and reconciles this information with EPA's internal records. After the information is verified through this audit, a final payment is made to the contractor.

Burden Statement: Public reporting burden for this collection of information is estimated to average 0.66 hours per response, including time for reviewing instructions, searching existing information sources, and completing and reviewing the collection of information.

Respondents: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations

Estimated Number of Respondents: 300.

Frequency of Collection: On occasion.

Estimated Number of Responses Per Respondent: 1.

Estimated Annual Burden on Respondents: 200 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: January 17, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94-1731 Filed 1-26-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4829-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before February 28, 1994.

FOR FURTHER INFORMATION OR A COPY OF THE ICR CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Land Disposal Restrictions No-Migration Variances. (EPA No. 1353.04; OMB No. 2050-0062). This ICR is a renewal of an approved collection.

Abstract: Section 3004 of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, prohibits land disposal of hazardous wastes beyond specified dates unless the owner/operator of a hazardous waste storage or disposal facility demonstrates to the Administrator of EPA that there will be no migration of hazardous constituents from the land disposal unit for as long as the waste remains hazardous. The regulated community can petition for a variance from statutory prohibitions or treatment requirements promulgated under section 3004, to continue land disposal of specific hazardous wastes at specific facilities. The requirements for obtaining these variances and the associated costs are discussed in detail in the ICR.

The Permits and State Programs Division, Office of Solid Waste, will review the petitions and determine if they successfully demonstrate no migration. Granting of a variance will be based upon successful demonstration that hazardous wastes can be managed safely in a particular land disposal unit, so that no migration of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. The statutory requirement for an application by an interested person is intended to place the burden on the applicant to prove that a specified waste

can be contained safely in a particular type of disposal unit.

Burden statement: The respondent burden for the no-migration petition is estimated to be 9,240 hours for each facility planning to request a variance.

Respondents: Owners/Operators of Hazardous Waste Storage or Disposal Facilities.

Estimated number of respondents: 2.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 18,492 hours.

Frequency of collection: As needed.

Send comments regarding the burden estimate, or any other aspects of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460 and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St. NW., Washington, DC 20503.

Dated: January 17, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94-1733 Filed 1-26-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4829-3]

Public Meeting To Discuss the EPA National Environmental Goals Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is developing national environmental goals. The purpose of the meeting is to discuss possible environmental goals with a group of invited participants and other members of the public. EPA Administrator Carol Browner expects to participate in this meeting.

DATES: The meeting will take place on January 31, 1994 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Hotel Atop the Bellevue, 1415 Chancellor Court, Philadelphia, PA 19102, (215) 790-2819.

FOR FURTHER INFORMATION CONTACT: Persons who would like to attend this meeting, please call Don Welsh, Chief of Government Affairs Branch, USEPA Region 3 at (215) 597-9072 to reserve a seat. Seating is limited and is on a first-come, first-served basis.

Dated: January 14, 1994.

Frederick W. Allen,

Acting Director, Office of Strategic Planning and Environmental Data.

[FR Doc. 94-1735 Filed 1-26-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4829-5]

Ozone Transport Commission for the Northeast United States; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on February 1, 1994.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meeting will be held on February 1, 1994.

ADDRESSES: The meeting will be held at: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 666-3383.

FOR PRESS INQUIRIES CONTACT: Brenda Box, Air Resources Management Division, D.C. Environmental Regulation Administration, 2100 Martin Luther King Jr. Avenue, SE., suite 404, Washington, DC 20020-5732, (202) 404-1136.

FOR DOCUMENTS CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street NW., suite 604, Washington, DC 20001, (202) 508-3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on February 1, 1994. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits, a time to be determined (see below).

Type of meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508-3840 on Wednesday, January 26, 1994. The final agenda will include the starting and adjournment times of the meeting. The purpose of the meeting is to receive reports from its committees, particularly on the Low Emission Vehicle program and control measures being studied for the November 15, 1994 State Implementation Plan revisions.

Paul Keough,

Acting Regional Administrator, EPA Region I.

[FR Doc. 94-1738 Filed 1-26-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1998]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 19, 1994.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed February 11, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992. (MM Docket No. 92-264).

Petition for Reconsideration: Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–1698 Filed 1–26–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1008–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1008–DR), dated January 17, 1994, and related determinations.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated January 17, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 1994:

Ventura and Orange Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–1708 Filed 1–26–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1008–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1008–DR), dated January 17, 1994, and related determinations.

EFFECTIVE DATE: January 17, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 17, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from an earthquake and aftershocks on January 17, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding for the first 72 hours.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Frank L. Kiston of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Los Angeles County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director

[FR Doc. 94–1707 Filed 1–26–94; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Dermatologic Drugs Advisory Committee

Date, time, and place. February 16, 1994, 8 a.m., conference rms. G through J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 12 m.; Ermona B. McGoodwin or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 11, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application NDA 19–821, Soriatane® (acitretin), Roche Dermatologics, for treatment of psoriasis.

Joint Meeting of the Dermatologic Drugs and Nonprescription Drugs Advisory Committees

Date, time, and place. February 16, 1994, 1 p.m., conference rms. G through J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Ermona B. McGoodwin or Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committees. The Dermatologic Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should notify the contact person before February 11, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will discuss new drug application NDA 20–310, ketoconazole 1% shampoo, Johnson and Johnson Consumer Products, for treatment of dandruff.

National Mammography Quality Assurance Advisory Committee

Date, time, and place. February 17 and 18, 1994, 8:30 a.m., Ballroom, Holiday Inn Metro Center, 775 12th St. NW., Washington, DC.

Type of meeting and contact person. Open public hearing, February 17, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, February 18, 1994, 8:30 a.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1901 Chapman Ave., Rockville, MD 20857, 301–594–3311.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 31, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will: (1) Discuss the interim final standards for accreditation bodies and for facilities, (2) receive status reports from FDA on activities related to implementation of the Mammography Quality Standards Act of 1992 (Pub. L. 102–539), and (3) discuss priorities for future standards.

Board of Tea Experts

Date, time, and place. February 24 and 25, 1994, 10 a.m., New York Regional Laboratory, rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person. Open public hearing, February 24, 1994, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, February 25, 1994, 10 a.m. to 4:30 p.m.; Robert H. Dick, New York Regional Laboratory, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 718–965–5730.

General function of the committee. The committee advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss and select tea standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–

305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 21, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–1702 Filed 1–26–94; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Program Exclusions: December 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject city, state	Effective date
Program-related convictions:	
Affzal, Chaudhry M, Brooklyn, NY	01/02/94
Anderson, David W, Germantown, WI	01/02/94
Anderson, Lynda, Germantown, WI	01/02/94
Beldengreen, David Z, Stillwater, NY	01/02/94
Bower, Laura, Brockport, NY	01/02/94
Cung, Kiew Trang, Houston, TX	01/02/94
Harmon, Bernard, Plainview, NY	01/02/94
Lowinger, Paul L, San Francisco, CA	01/06/94
Majeed, Abdul, Hollis, NY	01/02/94
Mariani, Aurora C, Honolulu, HI	01/06/94
O'Connell, Barbara, North Dighton, MA	01/03/94
Park East Surgical Equipment, Brooklyn, NY	01/03/94
Pascua, Arsenio L, Hacienda Hgts, CA	01/06/94
Podrasky, Frank P, Bridgeport, CT	01/02/94
Richardson, Dorothy, Madison, WI	01/02/94
Rubatt, Sharon, Iron River, WI	01/02/94
Siddiqui, Shahid M, Fishkill, NY	01/03/94
Singla, Sudarshan K, New Rochelle, NY	01/03/94
Waters, Cindy, Hazelhurst, GA	01/02/94
Zimmerman, David, Bloomfield Hills, MI	01/02/94
Zuffante, John P, Quincy, MA	01/03/94
Patient abuse/neglect convictions:	
Adio, Olanrewaju, E Providence, RI	01/02/94
Allen, Kessarah E, Colfax, LA	01/02/94
Anahory, Raquel, Pawtucket, RI	01/02/94
Bartholomew, Barbara, Harmony, RI	01/02/94
Bowman, Ruby, Ashland, AL	01/02/94
Jackson, Christian, Providence, RI	01/03/94
Lafave, Roberta K, Oscoda, MI	01/02/94
Merritt, Shirley, Eutaw, AL	01/03/94
Nicholson, Arthur, Gordo, AL	01/02/94
Norris, Douglas Lane, San Jacinto, CA	01/06/94
Sears, Selina, Providence, RI	01/02/94
Conviction for health care fraud:	
Tan, Earl Eng-Chow, Houston, TX	01/02/94
Controlled substance convictions:	
Agpaoa, Rodrigo D, Brooklyn, NY	01/02/94
Lauren, Stephen W, Kings Point, NY	01/03/94
License revocation/suspension:	
Lasko, Keith A, Chicago, IL	01/02/94
Sheehan, Marlene F, Nashua, NH	01/02/94
Federal/state exclusion/suspension:	
Balboa Ambulance, Inc., San Diego, CA	01/19/94
Entities owned/controlled by convicted:	
Richardson's Totum, Madison, WI	01/02/94
Warren A Rubin, D.P.M., P.A., Camden, NJ	01/02/94
Default on heal loan:	
Adams, Stephen C, Portsmouth, OH	01/13/94
Allen, David F, Madison Hgts, MI	01/12/94
Baker, Donnie W, Nashville, TN	01/12/94
Barton, Diane M, Olympia Fields, IL	01/12/94
Bennett, Regina V, Clearwater, FL	01/13/94
Berger, David L, Wampum, PA	01/13/94
Brightwell, Terry D, Vallejo, CA	01/16/94
Buckley, John F, Massilon, OH	01/12/94
Carroll, Otto S Jr, Atlanta, GA	01/13/94
Dobrota, Jerry G, Sedona, AZ	01/16/94
Elliott, Joseph E Macon, MO	01/12/94
Finucane, Charity M, Rockville, MD	01/13/94
Gerstman, David I, Tempe, AZ	01/16/94
Gifford, Craig P, West Valley, UT	01/12/94
Given, Vaughn Mitchell, Mission Viejo, CA	01/16/94
Gott, George M, Boise, ID	01/16/94
Graves, William T, St Petersburg, FL	01/12/94
Green, Sheldon S, Oxnard, CA	01/16/94
Jackson, Jerry J, Marietta, GA	01/13/94
Jimenez, Aurelio P, Kokomo, IN	01/12/94
Johnson, Carol A, Hawthorne, NV	01/16/94
Kupetz, Scott R, Manhattan, NY	01/12/94
Leggett, Gilbert H, Washington, DC	01/13/94
Locke, Peggy J, Santa Barbara, CA	01/16/94
Mane, Joseph Walter, Miami, FL	01/13/94
Mangum, Donald Lance, Springville, UT	01/12/94
Marlatt, Stephanie J, Michigan City, IN	01/12/94
Mash, Harold Jerry, Chicago, IL	01/12/94
McCormack, Faith J, Washington, DC	01/13/94
Meredith, David G, Wilmington, NC	01/12/94
Miller, Guy M, Claremont, CA	01/16/94
Moon, Craig W, Milwaukee, WI	01/12/94
Morris, Russell D, Philadelphia, PA	01/13/94
Mosley, James C Jr, Columbus, GA	01/13/94
Nelson, Howard D, Kansas City, MO	01/12/94
Neumunz, Gregory D, Hampstead, NC	01/13/94
Nydegger, Bradley S, Sacramento, CA	01/16/94
Obadia, Eric S, Bayside, NY	01/12/94
Perkins, Terence M, Bronx, NY	01/12/94
Pote, William H W III, Loma Linda, CA	01/16/94

Subject city, state	Effective date
Powell, Carlton F, Melrose Park, PA	01/13/94
Price, Arthur R, Kansas City, KS	01/12/94
Rivera, Axel E, Rio Piedras, PR	01/12/94
Rowland, Jimmy H, Centerville, GA	01/12/94
Russell, Bobby D, Kentwood, MI	01/12/94
Siminski, Larry T, Atlanta, GA	01/12/94
Smith, Gertrude M, New York, NY	01/12/94
Stjernholm, Darwin Lee, Lakewood, CO	01/12/94
Tarvin, Kerry D,Yuba City, CA	01/16/94
Taylor, Julie A, Glendale, CA	01/16/94
Thomas, Bruce L, St Petersburg, FL	01/13/94
Trainer, Anita J, Denver, CO	01/12/94
Valenzuela, Debbie L, Anchorage, AK	01/16/94
Walters, Clark C, Dunedin, FL	01/13/94
Wilson, Debra D, Rock Hill, SC	01/13/94
Wimbish, Ronald P, Nashville, TN	01/13/94
Zulovitz, Mark J, Vero Beach, FL	01/13/94
Peer review organization cases:	
Stevens, Mildred J, Garnett, KS	12/29/93

Dated: January 14, 1994.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 94-1643 Filed 1-26-94; 8:45 am]

BILLING CODE 4110-60-P

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, February 14-15, 1994, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 14 from 8 a.m. to approximately 5:15 p.m., and again on February 15 from approximately 11:15 a.m. until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 19(d) of Public Law 92-463, the meeting will be closed to the public on February 15 from 8 a.m. to approximately 11 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301-496-4291) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accomodations, should contact Dr. Bruce Chabner (301-496-4291) in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-1747 Filed 1-26-94; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Center for Research Resources; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the National Center for Research Resources (NCRR) for February-March 1994. These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice.

These meetings will be closed to the public as indicated below in accordance with 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 individuals 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.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 594-7938, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary or the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: General Clinical Research Centers Committee

Scientific review administrator: Dr. Bela J. Gulyas, National Institutes of Health, Westwood Building, room 10A16, Bethesda, MD 20892, Telephone: (301) 594-7903

Dates of meeting: February 16-18, 1994

Place of meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814

Open: February 16, 8 a.m.-9:30 a.m.

Closed: February 16, 9:30 a.m. until adjournment

Name of Committee: Biomedical Research Technology Review Committee

Scientific review administrator: Dr. Chhanda L. Ganguly, National Institutes of Health, Westwood Building, room 10A14, Bethesda, MD 20892, Telephone: (301) 594-7957

Dates of meeting: February 24-25, 1994

Place of meeting: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814

Open: February 24, 8:30 a.m.-10 a.m.

Closed: February 24, 10 a.m. until adjournment.

Name of committee: Comparative Medicine Review Committee

Scientific review administrator: Dr. Bernadette Tyree, National Institutes of Health, Westwood Building, room 10A16, Bethesda, MD 20892, Telephone: (301) 594-7932

Dates of meeting: February 27-March 1, 1994

Place of meeting: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037

Closed: February 27, 6:30 p.m. until recess

Open: February 28, 8:30 a.m.–10 a.m.

Closed: February 28, 10 a.m. until adjournment

Name of Committee: Research Centers in Minority Institutions Review Committee

Scientific review administrator: Dr. John Lymangrover, National Institutes of Health, Westwood Building, room 10A14, Bethesda, MD 20892, Telephone: (301) 594–7932

Dates of meeting: February 28–March 1, 1994

Place of meeting: Holiday Inn Crowne Plaza, 9000 Rockville Pike, Rockville, MD 20852

Open: February 28, 8:30 a.m.–10:30 a.m.

Closed: February 28, 10:30 a.m. until adjournment

(Catalog of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, 93.371, Biomedical Research Technology and 93.306, Laboratory Animal Sciences and Primate Research, 93.389, Research Centers in Minority Institutions, National Institutes of Health)

Dated: January 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1754 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of committee: National Advisory Research Resources Council

Date of meeting: February 10–11, 1994

Place of meeting: National Institutes of Health, Conference Room 6, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: February 10, 9 a.m. until recess

Closed: February 11, 8 a.m. until 10 a.m.

Open: February 11, 10 a.m. until adjournment

Name of committee: The Planning and Agenda Subcommittee of the National Advisory Research Resources Council

Place of meeting: National Institutes of Health, Conference Room 3B41, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: February 10, 12 noon–1:15 p.m.

Executive Secretary: Louise Ramm, Ph.D., Biological Models and Materials Research Program, National Center for Research Resources, Westwood Building, room 854, Bethesda, MD 20892, Telephone: (301) 594–7906.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 850, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7938, will provide a summary of meeting and a roster of the members upon request. Dr. Louise Ramm, Executive Secretary, NCRR, Westwood Building, room 854, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7906, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health)

Dated: January 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1755 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 27, 28, and March 1, 1994, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 27, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in 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 on February 27, from 8:30 p.m. to adjournment on March 1, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 594–7450, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1753 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 10–11, 1994, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet together on February 9, at the Marriott Hotel, Bethesda, Maryland.

The Council meeting will be open to the public on February 10 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is 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., sec. 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on February 10 and from 8:30 a.m. to adjournment on February 11 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on February 9, will be closed from 7 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7454, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1756 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of a review committee of the National Institute of Mental Health for February 1994.

The meeting will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

The meeting will be closed to the public as indicated below 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 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.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Biological Psychopathology Review Committee.
Contact: William H. Radcliff, Parklawn Building, room 9C–101, Telephone: 301, 443–3857.
Meeting Date: February 17, 1994.
Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.
Open: February 17, 1994, 9 a.m.–10 a.m.
Closed: February 17, 1994, 10 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: January 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1748 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute on Drug Abuse for February 1994.

These meetings will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicated below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 15–17, 1994.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 15, 8:30 a.m. to 9 a.m.
Closed: 9 a.m., February 15, to adjournment on February 17
Contact: Syed Husain, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.
Committee Name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 15–17, 1994.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 15, 9 a.m. to 9:30 a.m.
Closed: 9:30 a.m., February 15, to adjournment on February 17
Contact: Gamil Debbas, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.
Committee Name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 15–18, 1994.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 15, 8:30 a.m. to 9 a.m.
Closed: 9 a.m., February 15, to adjournment on February 18
Contact: Rita Liu, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: January 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1746 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee on March 25, 1994. The meeting will take place from 8:30 a.m. to 5 p.m. in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which will be open to the public, is being held for discussion of the Extramural Research programs. Attendance by the Public will be limited to space available.

Further information concerning the Committee meeting may be obtained from Dr. Ralph F. Naunton, Executive Secretary, DCD Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400C, National Institutes of Health, Bethesda, Maryland 20892, 301–496–1804. A summary of the meeting and a roster of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Naunton two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: January 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1749 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Allergy and Infectious Diseases; Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on March 1–2, 1994, in the Congressional Ballroom of the Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 8 a.m. until recess on March 1 and from 8 a.m. until adjournment on March 2. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, identify critical gaps/obstacles to progress, and provided concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, telephone (301) 496–0545, 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. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: January 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1750 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting: National Digestive Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on February 28–March 1, 1994. On Monday, February 38, a conference on "The Role of Transjugular Intrahepatic Portal-Systemic Shunt (TIPS) in Therapy of Portal Hypertension" will be held from 8:30 a.m. until 4:45 p.m. The Board will reconvene at 6 p.m. until approximately 9 p.m. to discuss issues related to health care reform. The TIPS conference will reconvene on Tuesday, March 1, from 8:30 a.m. until approximately 1:30 p.m. Other Board business will begin at 1:30 p.m. until adjournment. These meetings, which will be open to the public, will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. Attendance by the public will be limited to space available. notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Ms. Tommie S. Tralka, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, her office will provide a membership roster of the Board and an agenda and summaries of the actual meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases

and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: January 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1751 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463; notice is hereby given of the meeting of the following Heart, Lung, and Blood 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: NHLBI SEP on Demonstration and Education Grant Applications (Telephone Conference Call).

Dates of Meeting: February 15, 1994.

Time of Meeting: 1 p.m.

Place of Meeting: 5333 Westbard Avenue, room 548, Bethesda, MD 20892.

Agenda: To evaluate and review grant applications.

Contact Person: C. James Scheirer, Ph.D., 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1752 Filed 1–26–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–04–4310–33: G4–060]

For a Wild and Scenic River Management Plan and Final Corridor Boundary; Oregon

AGENCY: Bureau of Land Management (BLM), Burns, Oregon, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of the final management plan and corridor boundary maps for the designated segments of the Donner und Blitzen River and its tributaries, a component of the National Wild and Scenic River System.

The boundaries are described in Appendix A of the Final Donner und Blitzen National Wild and Scenic River Management Plan and Environmental Assessment which was completed and published in May 1993.

The plan and boundary maps are available for review or limited copies of the plan are available from the Burns District Office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Glenn Patterson, Area Manager, Andrews Resource Area, Burns District, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, telephone (503) 573–5241.

Dated: January 21, 1994.

Michael T. Green,

District Manager.

[FR Doc. 94–1688 Filed 1–26–94; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–347]

Certain Anti-Theft Deactivatable Resonant Tags and Components; Notice of Request for Written Submissions on the Issues of Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to request submissions on the issues of remedy, the public interest, and bonding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: On December 9, 1993, the presiding administrative law judge (ALJ) issued a final initial determination (ID) in this investigation. Ordinarily, final IDs are processed in accordance with the deadlines set forth in Commission interim rules § 210.53–.56. In this investigation, however, the Commission determined to waive in part the application of those interim rules and to apply instead a revised procedure, as set forth at 58 FR 63391 (Dec. 1, 1993). Accordingly, the Commission ordered that consideration of the ALJ's final ID in this investigation would be according to a revised procedure. Under the revised schedule, the parties were allowed to file petitions for review of the ID, responses to the petitions for review, and replies to the responses by certain deadlines. The Commission also indicated that it might later issue a notice requesting written submissions from the parties, other federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding, and/or requiring the parties to file supplemental briefs on violation issues selected by the Commission.

In accordance with the schedule previously announced, complainant filed a petition for review, respondents and the Commission investigative attorney filed responses to the petition for review, and all parties filed reply submissions.

The Commission has not yet completed its review of the record in this investigation and has made no determinations with respect to the ID or complainant's petition for review.

If the Commission finds a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in this investigation, it could issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public

health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed, if any.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are requested to file written submissions on the issues of remedy, the public interest, and bonding. Comments regarding remedy, the public interest, and bonding are particularly requested with respect to respondent Custom Securities Industries, Inc., which was found in default on October 17, 1993. See 58 FR 52323.

Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 31, 1994. Reply submissions must be filed no later than the close of business on February 7, 1994. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR § 210.58).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: January 21, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1757 Filed 1–26–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Decision Not to Review Initial Determination Granting Joint Motion to Terminate the Investigation With Respect to Respondent Tosoh Corp. on the Basis of a License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 79) issued on December 20, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Tosoh Corp. ("Tosoh") to terminate the investigation as to Tosoh on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On November 17, 1993, Aine and Tosoh filed a joint motion to terminate the investigation with respect to Tosoh on the basis of a licensing agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to Tosoh. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: January 21, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1758 Filed 1–26–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–354]

Commission Determination Not to Review an Initial Determination Finding a Violation of Section 337 and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) final initial determination (ID) in the above-captioned investigation finding a violation of section 337 in the importation into the United States, the sale for importation,

and the sale within the United States after importation of certain tape dispensers.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3094.

SUPPLEMENTARY INFORMATION: Minnesota Mining and Manufacturing Company ("3M") filed an amended complaint on June 30, 1993, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging that three respondents: (1) Acurite Industries Corp.; (2) Fancy International (HK) Ltd.; and (3) Charles Leonard, Inc. had violated section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tape dispensers. The tape dispensers were alleged to infringe the claim of U.S. Letters Patent Des. 289,180 (the '180 patent). On July 21, 1993, the Commission instituted this investigation by notice published in the **Federal Register** at 58 FR 39036.

The Commission terminated respondent Fancy International and amended the notice of investigation to add as respondents Hoi Fung Industrial Company, Shiang Shin Trading Co., and Safina Office Products by notice published on November 10, 1993, at 58 FR 59735. The Commission terminated respondent Shiang Shin Trading Co. and changed the name of respondent Safina Office Products to Shiang Shin International, Inc. d/b/a Safina Offfice Products by notice published on January 12, 1994 at 59 FR 1762.

On November 29, 1993, complainant 3M filed a motion for summary determination of violation of section 337 which was unopposed. On December 23, 1993, the presiding ALJ issued her final ID finding that there was a violation of section 337. The ALJ found that the '180 patent was valid and infringed. The ALJ also found that a domestic industry exists with respect to the patent claim in issue. No petitions for review or government agency comments were received by the Commission. Having examined the record in this investigation, including the ID, the Commission determined not to review the ID, thereby finding a violation of section 337.

In connection with final disposition of this investigation, the Commission may issue (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on February 9, 1994. Reply submissions must be filed no later than the close of business on February 16, 1994. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are/or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: January 21, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–1759 Filed 1–26–94; 8:45 am]

BILLING CODE 7020–OL–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32445]

CSX Transportation, Inc.—Acquisition of Trackage Rights; the Indiana Rail Road Company; Notice of Exemption

The Indiana Rail Road Company (INRD) has agreed to grant CSX Transportation, Inc. (CSXT), approximately 55 miles of overhead trackage rights extending from the CSXT/INRD connection at Bloomington, IN, west to the CSXT/INRD connection at Sullivan, IN. The trackage rights were to become effective on or after January 17, 1994.

The transaction is intended to make permanent a temporary detour arrangement. The detour was necessitated by a washout of a portion of CSXT's rail line near Cloverdale, IN. By agreement, INRD will haul CSXT's cars in INRD trains between Bloomington and Sullivan. CSXT will not exercise the trackage rights unless INRD is unable or unwilling to perform the haulage services called for in their agreement.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected

under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice of exemption contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

Decided: January 21, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1767 Filed 1–26–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32444]

The Indiana & Central Ohio Railroad Company, Inc.; Trackage Rights Exemption; West Central Ohio Port Authority

West Central Ohio Port Authority (WESTCO PA) has agreed to grant overhead and local trackage rights to The Indiana & Central Ohio Railroad Company, Inc. (I&CO) over approximately 64.4 miles of rail line known as the Bellefontaine Cluster in Clark, Champaign, and Logan Counties, OH. WESTCO PA is acquiring the line from Consolidated Railroad Corporation (Conrail).[1] The trackage rights consist of the following: (1) The Bellefontaine Secondary Track, from milepost 98.8 at or near Bellefontaine to milepost 129.4, at a point of connection with the Catawba Secondary Track in Springfield; (2) The Catawba Secondary Track, from milepost 129.4 in Springfield to milepost 130.6, at a point of connection with Conrail's Cincinnati line in Springfield; (3) The Catawba Secondary Track, from milepost 0.0 in Springfield to milepost 17.2 at the end of the track in Mechanicsburg; (4) The Urbana Industrial Track, from milepost 45.2 to milepost 50.03 in Urbana; (5) The Urbana Secondary Track, from milepost 48.1 in Urbana, to milepost 54.2 in Bowlusville; (6) The Maitland Secondary Track, from milepost 124.5 to milepost 122.2 near Maitland; (7) a portion of the former main line of the Erie Railroad, from milepost 351.5 near Glen Echo to milepost 353.1 in Urbana; and (8) a portion of the Old St. Mary's Branch, from milepost 53.3 to milepost 52.73 in Bellefontaine.

The trackage rights will allow I&CO to serve new markets and shippers in west central Ohio in connection with its existing operations near Springfield, OH. The trackage rights were to become effective on January 14, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. 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: Robert L. Calhoun, 1025 Connecticut Avenue, NW., suite 1000, Washington, DC 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: January 21, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1766 Filed 1–26–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–83 (Sub-No. 13X)]

Maine Central Railroad Company; Abandonment Exemption; in Coos and Carroll Counties, NH

Maine Central Railroad Company (MEC) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon two segments of its Mountain Division line (1) between milepost 51.11, near Conway, and milepost 67.00, near Bartlett and (2) between milepost 90.00, near Carroll, and milepost 103.16, near Whitefield, a distance of 29.05 miles, in Coos and Carroll Counties, NH.[1]

MEC has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to the use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 26, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by February 7, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 16, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kevin J. O'Connell, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MEC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The

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This proceeding is directly related to a notice of exemption concurrently filed in Finance Docket No. 32443, *West Central Ohio Port Auth.—Acq. Exempt.—Consolidated Rail Corp.* to exempt the acquisition by WESTCO PA of certain Conrail lines

[1] Abandonment and discontinuance of the line segment between mileposts 67.00 and milepost 90.00, was exempted in *Maine Central R. Co. and Springfield Terminal Ry. Co.—Aband. and Discon. Exempt.—In Carroll and Coos Counties, NH*, AB–83 (Sub-No. 11X) (ICC served June 6, 1991).

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 1, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 21, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1768 Filed 1–26–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32442]

NEBKOTA Railway, Inc.—Acquisition and Operation Exemption—Line of Chicago and North Western Transportation Co.; Exemption

NEBKOTA Railway, Inc. (NEBKOTA), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate a 73.5-mile line of the Chicago and North Western Transportation Company (CNW) between Merriman, at or near milepost 331.0, and Chadron, at or near milepost 404.5, in Cherry, Sheridan, and Dawes Counties, NE.

The transaction includes the acquisition of incidental trackage rights over a 27.8-mile CNW rail line in Dawes County between Chadron, at or near milepost 404.5, and Crawford, at or near milepost 432.3. With the trackage rights, NEBKOTA will be able to interchange with Burlington Northern Railroad Company. The transaction was to become effective on or after January 10, 1994. The parties certify that NEBKOTA's projected revenues do not exceed those that would qualify it as a class III carrier.

As a condition to the use of this exemption, any employees affected by the acquisition and operation will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). Any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, suite 3118, Chicago, IL 60606–3103.

Decided: January 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1671 Filed 1–26–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance for Workers Program in Title V of the North American Free Trade Agreement (NAFTA) Implementation Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of General Administration Letter No. 7–94.

SUMMARY: This notice and publication of General Administration Letter (GAL) No. 7–94 inform the States and cooperating State agencies of the amendments to the Trade Act of 1974 in Title V of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182). These amendments affect the program of trade adjustment assistance for workers and the administration of the program by the States pursuant to State agreements with the Secretary of Labor. The amendments must be implemented as of the respective dates set out in Title V and contained in the GAL published with this notice

The Title V amendments supersede the statute in effect prior to these amendments and affect the regulations at 20 CFR part 617 and 29 CFR part 90 currently in effect, to the extent that such prior law and regulations are inconsistent with the amendments. Pending the issuance of final regulations implementing the provisions of the Title V amendments, the GAL published with this notice expresses the Department of Labor's position on procedures for implementation of the amendments and their respective meanings, and constitutes operating instructions to the States.

The Title V amendments also require States to make available certain assistance and services authorized under Title III of the Job Training Partnership Act to workers whom the Governor preliminarily finds to be adversely affected by NAFTA. The GAL informs the States of this requirement, and of the potential for secondary workers in firms supplying component parts to primary producers affected by NAFTA to receive assistance under the Title III program. Additional information concerning the use of Title III funds to assist these workers and other individuals adversely affected by NAFTA will be forthcoming.

FOR FURTHER INFORMATION CONTACT: For TAA Program information, contact: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance; Telephone: (202) 219–5555. For JTPA Title III information, contact: Doug Holl, Office of Worker Retraining and Adjustment Programs; Telephone (202) 219–5306. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act. The GAL relates primarily to those provisions of Title V of the Act affecting the TAA Program. Most of the provisions of Title V are in the form of amendments to Chapter 2 of Title II of the Trade Act of 1974. Some of the provisions of Title V are not in the form of amendments to the Trade Act, however, they nonetheless must be given effect in implementing the NAFTA–TAA program.

While the NAFTA–TAA program is generally similar to the existing TAA program, it does differ in several ways:

—Governors have a specific role in the new adjustment assistance program targeted to workers who may be displaced because of trade with Canada or Mexico. State agencies also have new program responsibilities.

—Group eligibility requirements have been changed to address imports of articles from Mexico and Canada only and to authorize the certification for NAFTA–TAA of worker groups when the workers' firm shifts production to Mexico or Canada.

—Workers are required to be enrolled in training to qualify for trade readjustment allowance (TRA) payments. Also, individual workers must be enrolled in training within specified time periods to qualify for

TRA after a worker group is certified for NAFTA–TAA.

—Adjustment assistance to workers adversely affected by NAFTA is also available under Title III of the JTPA. States are responsible for assuring that certain assistance and services are made available to workers whom the Governor preliminarily finds to be adversely affected by NAFTA.

—Dislocated workers who are indirectly affected by NAFTA, e.g., workers in firms which supply components to a firm whose final product is adversely affected by imports from Mexico or Canada, may seek under Title III assistance similar to that available through the NAFTA–TAA program.

It is the Department's intention to publish for comment proposed regulations regarding implementation of the provisions of Title V relating to transitional adjustment assistance.

Because the provisions were effective on January 1, 1994, it is essential to inform the States and the cooperating State agencies of the terms of the provisions and of the Department's instructions concerning the proper implementation of these provisions.

For the reasons set out above, GAL No. 7–94 is published below.

Signed at Washington, DC, on January 19, 1994.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

Directive: General Administration Letter No. 7–94

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator, for Regional Management; Wilbert F. Solomon, Deputy Administrator for Regional Management

Subject: Operating Instructions for Implementing the Amendments to the Trade Adjustment Assistance for Workers Program in Title V of the North American Free Trade Agreement (NAFTA) Implementation Act

Rescissions: None

Expiration Date: January 31, 1995

1. *Purpose.* To assist the States with implementing the Transitional Adjustment Assistance Program in Title V of the NAFTA Implementation Act. These operating instructions shall remain in effect until superseded or supplemented by further operating instructions or until amended regulations are published.

To alert the States to the opportunity for the provision of adjustment assistance under Title III of the Job Training Partnership Act (JTPA) to workers in secondary firms who are adversely affected by NAFTA.

2. *References.* The NAFTA Implementation Act (Pub. L. 103–182) is referred to as "the Act." The program of trade adjustment assistance for workers established by Chapter 2 of Title II of the Trade Act of 1974 is referred to as the "TAA Program". The Trade Act of 1974 may be referred to as simply the "Trade Act." The NAFTA Implementation Act Title V—NAFTA Transitional Adjustment Assistance and Other Provisions, affecting the TAA program is referred to as Title V or NAFTA–TAA.

3. *Background.* The Trade Act of 1974 made major changes to the trade adjustment assistance program for workers displaced because of increased imports of articles like or directly competitive with articles produced by the workers' firm. On receiving a petition for trade adjustment assistance from a group of workers or its authorized representative, the Department of Labor conducts a fact-finding investigation in response to the petition. If the findings substantiate that the workers of a firm or subdivision of have been adversely affected by import competition, a certification is issued by the Secretary of Labor to the worker group stating that the workers are eligible to apply at a local office of the State employment security agency for TAA benefits. Benefits include up to 104 weeks of training in new occupational skills, and job search assistance and relocation allowances when jobs are not available within the commuting area from the worker's residence. Workers participating in training (unless the training requirement is waived) may also receive up to 52 weeks of trade readjustment allowance (TRA) payments which are generally equivalent to the worker's unemployment insurance payment.

Regulations implementing the adjustment assistance program for workers in chapter 2, title II, of the Trade Act are published at 20 CFR part 617.

On December 8, 1993, the President signed into law the "North American Free Trade Agreement Implementation Act." These implementing instructions relate only to those provisions of Title V affecting the TAA Program. Most of the provisions of Title V are in the form of amendments to Chapter 2 of Title II of the Trade Act of 1974, and while some of the provisions of Title V are not in the form of amendments to the Trade Act, they nonetheless must be given effect in implementing the NAFTA–TAA program.

While the NAFTA–TAA is generally similar to the existing TAA Program, it does differ in several ways. Governors have a specific role in the new adjustment assistance program targeted to workers who may be displaced because of trade with Canada or Mexico. State agencies also have new program responsibilities. The NAFTA–TAA program requires workers to be enrolled in training to qualify for trade readjustment allowance (TRA) payments and does not allow the waiver of the training requirement when training is not "feasible or appropriate", which is now available to eligible workers in the regular TAA program. To provide for these differences, Section 502 of the Act adds a new Subchapter D—NAFTA Transitional Adjustment Assistance Program, to Chapter 2 of Title II of the Trade Act. Subchapter D adds one section—Section 250, Establishment of a Transitional Program—to Chapter 2, Title II of the Trade Act, creating the new NAFTA–TAA program.

Adjustment assistance to workers adversely affected by NAFTA is also available under Title III of the JTPA. States are responsible for providing assistance and services to workers whom the Governor preliminarily finds to be adversely affected by NAFTA. In addition, dislocated workers who are indirectly affected by NAFTA, e.g., workers in firms which supply components to a firm whose final product is adversely affected, may seek assistance similar to that available through the NAFTA–TAA program. Effective delivery of these Title III funded services will require governors to ensure close planning and coordination between the TAA and Title III program operators.

4. *Operating Instructions.* The operating instructions in this document are issued to the States and the cooperating State agencies as guidance provided by the Department of Labor in its role as the principal in the TAA Program. As agents of the United States, the States and cooperating State agencies may not vary from the operating instructions in this document without prior approval from the Department of Labor (DOL).

Pending the issuance of regulations implementing the provisions of Title V, the operating instructions in this document shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the new NAFTA–TAA program, pursuant to the agreements between the States and the Secretary of Labor under Section 239 of the Trade Act.

Instructions for implementing the JTPA Title III component, including procedures for accessing the national reserve funds to provide assistance to workers of secondary firms who are

adversely affected by NAFTA, will be issued shortly.

NAFTA–TAA amendments are set out in this document according to the section number of the Trade Act affected by each of the amendments. An explanation of each amendment is furnished with an explanation of the regulations principally affected, and with additional instructions on the administration of each amendment.

A. Establishment of Transitional Program

Section 502 of the Act establishes a new Subchapter D in Chapter 2 of Title II of the Trade Act as follows:

A.1. *Group Eligibility Requirements.*

AMENDED LAW. Subsection (a) of section 250 is titled Group Eligibility Requirements. Paragraph (1) of subsection (a) sets out the criteria for certifying a worker group for NAFTA–TAA as follows:

A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under subsection (b) if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and either—

(A) that—

(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,

(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and

(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

ADMINISTRATION. As mentioned above, paragraph (a)(1) sets out the group eligibility criteria for certifying worker groups for transitional adjustment assistance. Two sets of criteria are included in subparagraphs (A) and (B). The criteria in subparagraph (A) are similar to the eligibility criteria in the regular TAA program (section 222 of the Trade Act), except that the criteria for NAFTA–TAA petitions provide that increased imports must come from Mexico or Canada.

Alternatively, and without reference to whether there have been increased imports from Mexico or Canada under subparagraph (A), the criterion under subparagraph (B) confers eligibility if the firm or subdivision of the firm has shifted production to Mexico or Canada of articles like or directly competitive with those produced by the firm or subdivision.

Application of Criteria:

For purposes of section 250, the following terms are applied:

Appropriate subdivision means an establishment in a multi-establishment firm which produces the domestic articles in question or a distinct part or section of an establishment (whether or not the firm has more than one establishment) where the articles are produced. The term "appropriate subdivision" includes auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities. (OTAA has interpreted the term "establishment" to include a place of business together with its employees, merchandise, equipment, etc.)

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm.

Significant number or proportion of workers means that:

a. In most cases the total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total unemployment of five (5) percent of the workers or 50 workers, whichever is less; or

b. At least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers would ordinarily have to be affected.

Total or partial separation. All analyses of separations must treat total and partial separations equally.

a. *Partial separation* means, with respect to an individual who has not been totally separated, that the worker's:

(1) Hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the firm or appropriate subdivision thereof, and

(2) Wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm or appropriate subdivision thereof.

b. *Total separation* means the layoff or severance of an individual from a firm or an appropriate subdivision thereof.

Criteria in Subparagraph (A): The following guidance and definitions shall apply:

a. *Sales and production* data must be obtained from the subject firm for the current 12-month period and the previous 12-month period in order to determine whether an absolute decrease in sales or production has occurred.

b. *Increased imports.* The Department's Office of Trade Adjustment Assistance (OTAA) will provide information based on available data regarding imports from Mexico or Canada of articles like or directly competitive with those produced by the firm or subdivision of the firm.

c. *Like or directly competitive* means that "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.); and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefor).

An imported article is "directly competitive" with a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.

Criterion in Subparagraph (B): The criterion under subparagraph (B) breaks down into the following elements:

a. *Determination of article.* The article must be like or directly competitive with the article that has been produced in the U.S. by the subject firm or subdivision of the firm.

Workers of firms that provide a service rather than produce an article are excluded from coverage.

Workers of firms that are suppliers of "components" related to the defined "like or competitive article" may be covered only if those articles produced by such firms independently meet the eligibility criteria for certification or the shift in production criterion.

b. *Action.* The article must have been formerly produced by a U.S. located firm or subdivision of the firm and is now produced in Mexico or Canada. Since the law does not address

ownership of the producing firm, the shift in production can be either by the firm or subdivision moving the plant to Mexico or Canada, or the U.S. firm contracting with a different firm located in Mexico or Canada.

c. *Definition.* A "shift of production" is defined to mean a tangible action or commitment to contract or license production of an article within a definite period of time by the workers' firm with a firm in Mexico or Canada, including the actual production of an article that was formerly produced by a U.S. located firm or subdivision, by a producing plant located in Mexico or Canada.

A.2. *Definition of Contributed Importantly.*

AMENDED LAW. Subparagraph (a)(2) of section 250 states that the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

ADMINISTRATION. The term "contributed importantly" is the same as used in section 222(b) of the Trade Act for administering the regular TAA program. The "contributed importantly" provision is used by the Department of Labor in its review of petitions for eligibility for the regular TAA Program and will also be used for the NAFTA–TAA program. Pursuant to section 250(b)(2)(B)(i), Governors, when making a preliminary finding as to whether a petition meets the eligibility requirements for NAFTA–TAA, discussed above, *will not* apply the "contributed importantly" test when reviewing NAFTA–TAA petitions.

When the Governor or the designated State official substantiates that the criteria in clauses (i) and (ii) of sections 250(a)(1)(A) have been met, the petition package including a statement of affirmative preliminary finding is forwarded to the OTAA for review. To confirm the State's affirmative preliminary finding, the OTAA will apply the criteria in section 250(a)(1)(A), including the "contributed importantly" test in clause (iii).

A.3. *Regulations.*

AMENDED LAW. Paragraph (a)(3) of section 250 provides that the Secretary shall issue regulations relating to the application of the criteria described above in making the preliminary finding and determinations.

ADMINISTRATION. Because of the time constraints for implementing the NAFTA–TAA program on January 1, 1994, regulations will not be in place until after this date. Accordingly, to begin operation of the program, operating instructions will be issued and published in the **Federal Register**. States should proceed to implement the NAFTA–TAA program based on these operating instructions.

A.4. *Filing of petitions.*

AMENDED LAW. Paragraph (b)(1) of section 250 provides that a petition for certification of eligibility to apply for NAFTA–TAA may be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.

ADMINISTRATION. This section provides that a petition for certification of eligibility may be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. It should be noted that a community-based organization may serve as a duly authorized representative of the workers.

Group means three or more workers in a firm or an appropriate subdivision thereof.

A new petition form has been designed for use by worker groups to file petitions for NAFTA–TAA. The NAFTA–TAA petition form will include a space in the filing instructions on the reverse side to permit the State to add the address of where the petitions are to be filed. A supply of the NAFTA–TAA petition forms will be furnished to each State. States should reproduce the NAFTA–TAA petition form to meet its needs.

Copies of the NAFTA–TAA petition form with the address for filing the petition are to be made available by the States, at a minimum, in every local employment service and unemployment insurance office. Staff in local offices must be familiar with the NAFTA–TAA program, as well as the regular TAA program, and the procedures being put in place to assure that workers applying for employment services and unemployment insurance benefits are advised properly regarding both TAA programs and on filing the proper petition form to the correct location.

NAFTA–TAA petition forms will be submitted to the State official or organization designated by the Governor to review such petitions.

Worker petitions for the regular TAA program will continue to be submitted directly to the Department of Labor's Office of Trade Adjustment Assistance, at the address on the reverse side of the form.

A.5. *Findings and Assistance.*

AMENDED LAW. Paragraph (b)(2) of section 250 specifies that upon the receipt of a NAFTA–TAA petition, the Governor will take the following actions:

A. Notify the Secretary of Labor that the Governor has received the petition.

B. Within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1) (and for purposes of this clause the criteria described in subparagraph (A)(iii) shall be disregarded), and

(ii) transmit the petition, together with a statement of finding under clause (i) and the reasons therefor, to the Secretary for action under subsection (c); and

C. If the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

ADMINISTRATION. This section establishes a role, as well as precise time frames, for Governors in processing NAFTA–TAA petitions. Because of these time frames, rigid processing procedures have been designed for coordinating the Governors' activities with the OTAA.

Time Frames.

Day 1:

a. The Governor receives a petition for NAFTA–TAA.

The State records the receipt date on the face of the petition, reviews the petition for completeness and clarity, and telephones the company official listed as the contact person on the petition.

b. Telephone contact with the company official is to cover the following:

(1) Determine if the official listed on the petition is the appropriate contact. If not, show the name, telephone number and FAX number (if available) of the appropriate contact person on the face of the petition.

(2) Confirm the product description reported on the petition. Accuracy is critical to DOL in determining whether imports of like or directly competitive products have increased.

(3) Ask the company official about total and partial worker separations at the firm during the past 12 months. If there were separations, ascertain if it was because of increased company imports from Mexico or Canada, an actual or threatened shift of production to either country, or lost sales to customers to purchase from firms importing from Mexico or Canada.

(4) Alert company official that data request forms will be sent by FAX (if available) or by mail, and obtain the official's cooperation to supply the requested information within 5 days of petition receipt. If the company official fails to cooperate, inform the company of subpoena authority to obtain the requested data.

If the company continues to refuse to supply the data, the State must notify the company in writing of its subpoena authority and determine if the data is to be furnished. Subpoena procedures should be instituted when there is non-compliance with the request. TAA program regulations at 20 CFR 617.53 provide that States may issue subpoenas for attendance of witnesses and production of records on the same terms and conditions as under State law. If a State court declines to enforce a subpoena, the State agency may petition for an order requiring compliance with such subpoena to the United States District Court within the jurisdiction of which the relevant proceeding under 20 CFR part 617 is conducted.

Obviously, encouraging company cooperation is the best solution to obtaining requested information. Use of subpoena procedures often result in lengthy legal negotiations and even court proceedings. Notify OTAA when subpoena procedures are being considered.

(5) Use the dedicated line (telephone number 202–501–6489) to FAX to OTAA the face page of the petition form as well as any corrections or additions obtained during telephone contacts with the company official. This action will serve as notification to the Secretary that the Governor has received a petition and that the investigation has been initiated.

(6) FAX (if available) or mail the data request forms, which include a request for a listing of company customers, to the company official, specifying a due date for the information to be returned via FAX or mail. If appropriate, inform the State employment security agency that an investigation is underway.

(7) OTAA will check its records for duplicate petitions and assign a NAFTA–TAA number to the case. OTAA will enter the case number in the OTAA Management Information System and institute the investigation of the petition. A notice of the investigation will be forwarded for publication in the **Federal Register** and the regional offices and State agencies notified according to established procedures in the regular TAA Program.

(8) OTAA will begin the analysis of aggregate U.S. imports for the article(s) listed in the petition that are like or directly competitive with the article(s) produced at the subject firm.

Day 3

OTAA will complete the aggregate import analysis and FAX a determination to the State as to whether relevant imports from Mexico or Canada have increased. This determination will be made part of the case file as it will be used by the State in making its preliminary finding.

Day 5

If the data package has not been received from the company official, the State will contact the company official to urge completion and transmittal by mail or FAX (if available) of the data.

Day 10

a. State will make a preliminary finding regarding whether the petition meets the criteria in section 250(a)(1), except clause (A)(iii), and will prepare a brief statement on the basis for the finding.

b. State will FAX the petition face sheet, the data packet (including the customer list), and the preliminary finding and reasons for the finding, to OTAA.

c. State will notify the petitioners of the Governor's preliminary finding on the NAFTA–TAA petition and that the petition package is being submitted to the Secretary of Labor for review and final determination.

d. When an affirmative determination is made, the State will take the necessary action to ensure that the JTPA Title III (Economic Dislocated Worker Adjustment Assistance) rapid response and basic readjustment services are made available to the impacted workers.

A.6. *Review of Petition by Secretary: Certifications.*

AMENDED LAW. Subparagraph (c)(1) of section 250 provides that the Secretary of Labor, within 30 days after receiving from the Governor a petition for NAFTA–TAA, shall determine whether the petition meets the group eligibility requirement for certification. Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for assistance under NAFTA–TAA.

ADMINISTRATION. The OTAA will review the State's preliminary finding on all NAFTA–TAA petitions. If an affirmative preliminary finding from the State, based on a shift in production to, or imports from, Mexico or Canada, is confirmed through an independent review by the OTAA, the Secretary will issue a certification of eligibility to apply for assistance. This determination will be published in the **Federal Register**.

If the affirmative preliminary finding from the State is not based on a shift in production to Mexico or Canada by the subject firm or on company imports from Mexico or Canada, OTAA will initiate a customer survey to determine whether the increase in aggregate imports contributed importantly to the workers' separations and to the decline in sales or production at the subject firm.

The OTAA will complete the customer survey, and the Secretary will issue a final determination within 30 days of the receipt of the State's preliminary finding.

The Secretary's determination to grant or deny certification will be sent by FAX to the State and appropriate regional office. This determination will also be published in the **Federal Register**.

A.7. *Denial of Certification.*

AMENDED LAW. Paragraph (c)(2) of section 250 provides that upon denial of certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of the regular TAA program under subchapter A of chapter 2 of title II the Trade Act to determine if the workers may be certified under such subchapter.

ADMINISTRATION. When a determination is made by the Secretary of Labor that the petition does not meet the eligibility requirements for NAFTA–TAA, the petition will immediately be reviewed by the OTAA under subchapter A of the Trade Act.

The 60-day time period under section 223 of Chapter 2 of Title II of the Trade Act for completing the review of a petition under subchapter A will begin on the date the denial of the NAFTA–TAA petition is issued.

A.8. *Comprehensive Assistance.*

AMENDED LAW. Subsection (d) of section 250 provides that workers covered by a certification for NAFTA–TAA shall be provided, in the same manner and to the same extent as workers covered under a certification for regular TAA, the following:

1. Employment services described in section 235 of the Trade Act.

2. Training described in section 236 of the Trade Act, except that notwithstanding the provisions of section 236(a)(2)(A), the total amount of payments for any fiscal year shall not exceed $30 million.

3. Trade readjustment allowances (TRA) described in sections 211 through 234 of the Trade Act, except that—

A. The provisions of sections 231(a)(5)(C) and 231(c) of the Trade Act, authorizing the payment of TRA upon a finding that it is not feasible or

appropriate to approve a training program for a worker, shall not be applicable to payment of such allowance under subchapter D; and

B. Notwithstanding the provision of section 233(b) of the Trade Act, in order for a worker to qualify for TRA under the NAFTA–TAA program, the worker shall be enrolled in a training program approved by the Secretary under section 236(a) by the later of—

(i) the last day of the 16th week of such worker's initial unemployment compensation period, or

(ii) the last day of the 6th week after the week in which the Secretary of Labor issues a certification covering such worker.

In cases of extenuating circumstances related to enrollment in a training program, the Secretary may extend the time for enrollment for a period not to exceed 30 days.

4. Job search allowances described in section 237.

5. Relocation allowances described in section 238.

ADMINISTRATION. The administration of the benefit provisions of the NAFTA–TAA program is similar to the regular TAA program except that the NAFTA–TAA program requires workers to be enrolled in training to qualify for TRA payments. The NAFTA–TAA program prohibits the waiver of the training requirement when training is not "feasible or appropriate," which is available to eligible workers in the regular TAA program. Also, the NAFTA–TAA program requires workers to be enrolled in training by prescribed time periods to qualify for TRA.

a. *Employment Services.* Employment services described in section 235 of the Trade Act are to be provided to NAFTA–TAA certified workers as provided to workers certified for regular TAA. Employment services are to be provided to NAFTA–TAA certified workers to the same extent that such services are provided to any workers seeking employment services under other Federal laws; i.e., Wagner-Peyser Act and Title III of JTPA. (See 20 CFR 617.20 and 617.21)

b. *Training.* Training is to be provided to NAFTA–TAA certified workers according to section 236 of the Trade Act.

Workers certified under NAFTA–TAA will have to satisfy the same criteria in 20 CFR 617.22(a) as apply to workers certified under the regular TAA program.

The Act provides that payments for NAFTA–TAA training for any fiscal year shall not exceed $30 million. With regard to this funding limitation, the Department will track nationally the amount of program funds allocated to the States and the amount of funds committed by the States in order to satisfy this statutory provision. States will be informed when the amount approaches $30 million nationally. Should the demand for funds exceed the limitation, instructions will be furnished on how to handle demands for training that exceed the statutory limitation.

c. *Trade Readjustment Allowances.* To qualify for TRA payments, an eligible worker must be enrolled in a training program approved by the later of—

(i) the last day of the 16th week of such worker's initial unemployment compensation period, or

(ii) the last day of the 6th week after the week in which the Secretary of Labor issues a certification covering such worker.

Application of time periods. The 16-week time requirement for enrolling in training in order to qualify for TRA will be applied literally. In order to be eligible to receive TRA under a NAFTA–TAA certification, the worker must be enrolled in an approved training program by the end of the 16th week of that worker's initial unemployment compensation benefit period.

This fixed 16-week period begins with the effective date of the claim and ends with the last day of the 16th week thereafter. Included in this 16-week fixed period are weeks of waiting period credit, weeks of disqualification, weeks of employment, and weeks of unemployment.

Initial unemployment compensation benefit period means the same as the term "first benefit period" defined at 20 CFR 617.3(r). "First benefit period" means the benefit period established after the individual's first qualifying separation or in which such separation occurs.

Enrolled in Training. For purposes of this provision, a worker shall be considered to be enrolled in training when the worker's application for training is approved by the State agency and the training institution has furnished written notice to the State agency that the worker has been accepted in the approved training program beginning within 30 calendar days.

Extenuating Circumstances. The Act provides that the Secretary, for justifiable cause, may extend the time for enrollment for a period not to exceed 30 days. It is anticipated that there will be situations beyond the worker's control where the worker is unable to enroll in training by the later of the last day of the 16th week of the worker's initial benefit period or the 6th week after the week that a certification was issued. Such situations could involve training programs that are abruptly canceled or circumstances where the first available enrollment date is past the deadline, as well as injury or illness which may adversely affect the ability of workers to enroll in training. The authority to grant 30-day extensions to workers is delegated to States or State agencies as one of their responsibilities under section 239 of the Trade Act.

The application of this 30-day grace period will be used only in rare circumstances. Workers who fail to enroll in training by the end of this 30-day period are still eligible to participate in approved training and have the training costs paid with NAFTA–TAA program funds but will not qualify for TRA. This provision places added responsibilities on both the worker and the State agency to satisfy the time limits for enrolling in training in order to qualify for TRA. Workers certified for NAFTA–TAA must be informed promptly of the time provisions by the State agency when a NAFTA–TAA certification is issued.

In order to satisfy these provisions, information bulletins or brochures furnished to claimants by the State unemployment insurance agency and to applicants for employment services should include information on the time provisions for NAFTA–TAA certified workers to qualify for TRA. Other means of informing workers of the time limits are through newspaper notices and letters sent to individual workers when a certification is issued, as required in section 225 of the Trade Act and regulations at 20 CFR 617.4.

Although the use of brochures, newspaper notices and individual letters are important resources for informing workers of the time provision for enrolling in training, they do not relieve States of their responsibility for helping workers enroll in a training program in a timely manner.

State agencies shall follow existing funding a precertification procedures for NAFTA–TAA program petitions now used for regular TAA Program petitions. Initiation of fact-finding investigations in response to NAFTA–TAA petitions will be announced through publication of the information in the **Federal Register**, in the same manner as regular TAA petitions.

Under precertification responsibilities, State agencies must obtain information from the subject firm about layoffs beginning on and after December 8, 1993, including the names and social security numbers of the

affected workers. The State agency staff shall also follow the procedures used for the regular TAA Program to check UI files, flag appropriate claims, and maintain coordination between the UI and ES offices to ensure that workers are enrolled in approved training within the statutory time frames so they are not denied TRA eligibility.

d. *Prohibition of Training Waivers.* Provisions of sections 231(a)(5)(C) and 231(c) of the Trade Act, authorizing the payment of TRA upon a finding that it is "not feasible or appropriate" to approve a training program for a worker, *are not applicable* to payment of TRA under the NAFTA–TAA program.

Thus, in order for a worker to qualify for TRA under the NAFTA–TAA program, the worker must be enrolled in training approved under section 236(a) of the Trade Act.

e. *Job search allowances.* Workers certified for NAFTA–TAA are eligible for job search allowances to the same extent and under the same conditions as workers certified for the regular TAA program under section 237 of the Trade Act.

f. *Relocation allowances.* Workers certified for NAFTA–TAA are eligible for relocation allowances to the same extent and under the same conditions as workers certified for the regular TAA program under section 238 of the Trade Act.

A.9. *Administration of NAFTA–TAA.*

AMENDED LAW. Subsection (e) of section 250 states that the provisions of subchapter C of Chapter 2, Title II, of the Trade Act shall apply to the administration of the NAFTA–TAA program in the same manner and to the same extent as such provisions apply to the administration of the regular TAA program under subchapters A and B of the Trade Act, except that the agreement between the Secretary and the States described in section 239 of the Trade Act shall specify the procedures that will be used to carry out the certification process under subsection (c) of section 250 and the procedures for providing relevant data by the Secretary to assist the States in making preliminary findings under subsection (b) of section 250.

ADMINISTRATION. The procedures for NAFTA–TAA certification process under subchapter D of Chapter 2, Title II, of the Trade Act are:

a. The certification procedures set forth in Sections A.5 and A.6 of this document provide operating instructions on the methods for making preliminary determinations under section 250(b) of the Trade Act and the Secretary's review of petitions under subsection (c).

b. Upon request from the Governor, the Secretary will make a determination of what relevant import data is needed to satisfy the criteria for making a preliminary finding under subsection (b) and provide such data to the State.

c. Pursuant to section 250(c), the Secretary will conduct a full investigation to determine if the petition for NAFTA–TAA certification meets the criteria specified in subsection (a).

B. CONFORMING AMENDMENTS

Section 503 of the new law provides conforming amendments to the Trade Act as follows:

B.1. *References.*

AMENDED LAW. Subsection (a) of section 503 of the new law amends sections 221(a), 222(a), and 223(a) by striking out "assistance under this chapter" and inserting "assistance under this subchapter".

ADMINISTRATION. These are technical changes which do not have a material effect on the administration and operation of the TAA and NAFTA–TAA programs.

B.2. *Benefit Information.*

AMENDED LAW. Subsection (b) of section 225 is amended by inserting "or subchapter D" after "subchapter A" each place it appears.

Administration. This change is needed because of the addition of subchapter D in Chapter 2, Title II, of the Trade Act. The impact of this amendment is to require that the same types of benefit information be furnished by State agencies to workers applying for unemployment insurance and to workers certified for NAFTA–TAA as are required by the regular TAA program.

B.3. *Nonduplication of Assistance.*

AMENDED LAW. Subsection (c) of section 503 amends subchapter C of Chapter 2, Title II, of the Trade Act by adding a new section 249A at the end on nonduplication of assistance. This new section provides that no worker may receive assistance relating to a separation pursuant to certifications under both subchapters A and D.

ADMINISTRATION. This new section is intended to eliminate duplication of assistance and benefits to a worker in situations where a worker group is certified concurrently for both regular TAA and NAFTA–TAA. These situations should be uncommon. However, should this occur, the worker will be provided benefits under one or the other certification. The worker is to make the decision regarding which certification will apply. Once a decision is made by the worker, it cannot be changed. Also, State agency staff must explain the differences between programs so workers can make an informed choice.

B.4. *Judicial Review.*

AMENDED LAW. Subsection (d) of section 503 amends section 284 of the Trade Act by inserting "or section 250(c) after "section 223."

ADMINISTRATION. Section 284 (19 U.S.C. 2395(a)) of the Trade Act addresses judicial review.

Subsection (d) has the effect of providing workers aggrieved by a decision of the Secretary of Labor on a petition, the same rights for judicial review as provided to workers pursuant to section 284 of the Trade Act. Regulations addressing judicial review are also set out at 29 CFR 90.19.

C. TERMINATION OF TRANSITION PROGRAM

C.1. Termination of Transition Program.

AMENDED LAW. Section 505 of the Act amends subsection (c) of section 285 of the Trade Act by—

(1) striking "No" and inserting "(1) except as provided in paragraph (2), no"; and

(2) adding at the end the following new paragraph:

(2)(A) Except as provided in subparagraph (B), no assistance, voucher, allowance, or other payments may be provided under subchapter D of chapter 2 after the day that is the earlier of—

(i) September 30, 1998, or

(ii) the date on which legislation, establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective.

(B) Notwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker—

(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and

(ii) is otherwise eligible to receive assistance in accordance with section 250.

such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.

ADMINISTRATION. Although the amended section is not part of Chapter 2 of Title II of the Trade Act, it does have a significant impact on the payment of benefits to NAFTA–TAA certified workers after the September 30, 1998 expiration date of the TAA program or an earlier expiration date prescribed in any new law. While it is important to be aware of this provision, the Department of Labor will provide precise closeout information to States in

advance of the statutory expiration date, or if the expiration date is impacted by a law change.

D. EFFECTIVE DATES

D.1. *General.*

AMENDED LAW. Subsection (a) of section 506 of the Act provides that sections 501, 502, 503, 504, and 505 shall take effect on the date the Agreement enters into force with respect to the United States.

ADMINISTRATION. It is expected that NAFTA will enter into force on January 1, 1994.

D.2. *Covered Workers; In General.*

AMENDED LAW. Subsection (b)(1), of section 506 of the Act states that, except as provided in paragraph (2) of section 506, no worker shall be certified as eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act (as added by this subtitle) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurred before such date of entry into force.

ADMINISTRATION. With the exception of the reachback provision, which is discussed in the next section, no worker is to be certified as eligible to receive assistance under NAFTA–TAA whose last separation under a certification occurred before the NAFTA date of entry into force.

D.3. *Covered Workers; Reachback.*

AMENDED LAW. Subsection (b)(2), of section 506 of the new law provides that notwithstanding paragraph (1), any worker—

(A) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurs—

(i) after the date of the enactment of this Act, and

(ii) before such date of entry into force, and

(B) who would otherwise be eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974, shall be eligible to receive such assistance in the same manner as if such separation occurred on or after such date of entry into force.

ADMINISTRATION. In determining the eligibility of workers for benefits under NAFTA–TAA, consideration must be given to the date a worker is separated from employment. A worker whose last total or partial separation from a firm occurred after the enactment of Pub. L. 103–182 on December 8, 1993, but before the date of entry into force of NAFTA (which is anticipated to be on January 1, 1994), may be eligible for certification under the "reachback" provision in section 506(b)(2) of the Act.

Workers whose total or partial separation occurred at an earlier time must petition under the regular TAA program to be eligible for TAA services and benefits. The regular TAA program allows workers laid off up to one year prior to the date of the petition on which a certification of eligibility is issued to qualify for services and benefits.

It is important for State agency staff members to be familiar with the reachback provisions of both the NAFTA–TAA and regular TAA programs so that they can properly advise workers regarding which program may be applicable to their situation.

5. *Action Required.* States are required to implement the provisions of the NAFTA Amendments as set forth in this document as of the date of NAFTA entry into force which is expected to be on January 1, 1994. States are advised to inform all appropriate staff of the contents of this document.

6. *Inquiries.* States are to direct all inquiries to the appropriate ETA Regional Office.

7. *Attachment.* Title V—NAFTA Transitional Adjustment Assistance and Other Provisions.

[FR Doc. 94–1599 Filed 1–26–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

January 21, 1994.

Notice is hereby given that a meeting of the Consultative Group, National Endowment for the Humanities-State Councils Partnership, will be held in Washington, DC on February 11–12, 1994.

The purpose of the meeting is to provide for an exchange of information and to obtain the advice of individual attendees regarding the relationship between the Endowment and the State Humanities Councils. The meeting, which is open to the public, will be held at the Morrison-Clarke Hotel, Massachusetts Avenue and 11th Street, NW., Washington, DC 20001, on Friday, February 11 (3 p.m. to 6:30 p.m.) and on Saturday, February 12 (8 a.m. to 4 p.m.).

Further information about this meeting can be obtained from Ms. Sondra Myers, Special Assistant to the Chairman for Institutional Relations, Washington, DC 20506, or call area code (202) 682–5403, TDD (202) 606–8282.

Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–1682 Filed 1–26–94; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* February 16, 1994
   Time: 8 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review applications for Dissertation Grants in European History to 1900, submitted to the Division of Fellowships and Seminar, for projects beginning after June 1, 1994.
2. *Date:* February 17, 1994
   Time: 8 a.m. to 5:30 p.m.

Room: 415
Program: This meeting will review Dissertation Grants applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

3. *Date:* February 17, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review Dissertation Grants applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

4. *Date:* February 18, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Dissertation Grants applications in Comparative Literature and Theory, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

5. *Date:* February 18, 1994
Time: 8 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Dissertation Grants applications in American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

6. *Date:* February 22, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Dissertation Grants applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

7. *Date:* February 22, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Dissertation Grants applications in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

8. *Date:* February 23, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Dissertation Grants applications in African, Asian, Modern European, and Latin American History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

9. *Date:* February 23, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Dissertation Grants applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

10. *Date:* February 24, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Dissertation Grants applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

11. *Date:* February 25, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Dissertation Grants applications in World Literatures and Languages, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

12. *Date:* February 25, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Dissertation Grants applications in Theater, Film, Music, and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

13. *Date:* February 28, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Dissertation Grants applications in Anthropology and Archaeology, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

14. *Date:* February 28, 1994
Time: 8 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Dissertation Grants applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–1740 Filed 1–26–94; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.
Date and Time: February 17–18, 1994; 8:30 a.m. to 5 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, room 370.
Type of Meeting: Closed.
Contact Person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1559
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 1994.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 94–1760 Filed 1–26–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Geosciences (1756).
Date and Time: February 7–8, 1994; 8:30 a.m. to 5 p.m.
Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
Type of Meeting: Closed.
Contact Person: Dr. Sunanda Basu (703) 306–1529 and Dr. Robert M. Robinson (703) 306–1531, Program Directors, Division of Atmospheric Sciences, Room 775, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Coupling, Energetics, and Dynamics of Atmospheric Regions (CEDAR) (Instrumentation Initiative) proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 21, 1994.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 94–1684 Filed 1–26–94; 8:45 am]
BILLING CODE 7555–01–M

Privacy Act of 1974; Establishment of A System of Records

AGENCY: National Science Foundation (NFS).

ACTION: Notice of establishment of a Privacy Act system of records.

SUMMARY: Notice is hereby given that the Office of the General Counsel (OGC) of the NSF is establishing a system of records. This action covers records in the agency's Debarment/Scientific Misconduct Files.

EFFECTIVE DATES: This action will be effective without further notice on February 28, 1994, unless comments are

received that would result in a contrary determination.

ADDRESSES: Interested persons may submit written comments to Anita Eisenstadt, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, at (703) 306–1060.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that the NSF proposes to establish a system of records identified as NSF–55, Debarment/Scientific Misconduct Files.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day comment period in which to comment on a new record system.

Dated: January 19, 1994.

Herman G. Fleming,

Reports Clearance and Privacy Act Officer, National Science Foundation.

NSF–55

SYSTEM NAME:

Debarment/Scientific Misconduct Files.

SYSTEM LOCATION:

Office of the Director, National Science Foundation, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, including applicants for NSF grants and contracts, NSF grantees, contractors, and principal investigators, who are the subject of suspension, debarment or scientific misconduct proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files on persons considered for debarment, suspension, or misconduct in science, including communications between the Agency and the respondent, inter-agency and intra-agency communications regarding proposed or completed debarments or suspensions or misconduct in science, investigative files, witness statements and affidavits, staff working papers, testimony transcripts, hearing exhibits, and a record of any findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a); Federal Acquisition Regulation (FAR) 9.4; 48 CFR ch. 25; 45 CFR parts 620 and 689; Executive Order 12549 (February 18, 1986).

PURPOSE:

Information contained in this system of records is used to protect the Federal Government from the actions prohibited under the Foundation's scientific misconduct, debarment and suspension regulations, make decisions regarding debarment, suspension, and misconduct in science, ensure that other Federal agencies give effect to debarment and suspension decisions rendered by the Foundation and ensure that the Foundation gives effect to debarment and suspension decisions rendered by other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. The General Services Administration to compile and maintain the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs".

2. A congressional office in response to an inquiry from the congressional office on behalf of a person for information pertaining to that person.

3. A Federal, state, or local government agency, in response to its request, or at NSF's initiative, when relevant to that agency's civil or criminal statutory, administrative, regulatory, enforcement, investigative, or prosecutorial purpose.

4. A Federal agency involved in debarment or scientific misconduct actions involving the same person.

5. Federal, State, or local government agencies where those parties may have information the Foundation seeks to obtain in connection with a scientific misconduct, suspension, or debarment action.

6. A Federal agency in response to its request in connection with the issuance of a security clearance, the award of a contract or grant, the issuance of a license or permit or other benefit by the requesting agency.

7. A Federal agency where records in this system of records pertain to the hiring or retention of an employee, or disciplinary action or other administrative action concerning an employee.

8. The Department of Justice or a court or other adjudicative body, when information from the system is relevant to litigation or anticipated litigation and one of the following is a party or potential party in the matter: (a) A National Science Foundation; (b) a National Science Foundation employee in his or her official capacity or a current or former National Science Foundation employee when the Department of Justice is considering representing the person in his or her official capacity; (c) the United States or another Federal, State or local agency and the National Science Foundation determines that the litigation or anticipated litigation will affect the National Science Foundation.

9. An awardee institution, at the request of that institution or at NSF's initiative.

10. Other persons involved in or affected by the suspension, debarment or scientific misconduct action, including witnesses, awardee institutions, or any other person who has information, documents, or knowledge relevant to the suspension, debarment, or scientific misconduct action.

11. NSF merit review groups or peer reviewers if the information bears directly on a person's scientific integrity or if necessary to provide an accurate account of relevant facts.

12. A Federal, State or local agency, Federal contractor or grantee, for the purpose of verifying the identity of an individual debarred or suspended by the Foundation.

13. The Department of Justice for the purpose of obtaining advice on whether particular records are required to be disclosed under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records consist of file folders stored in file cabinets.

RETRIEVABILITY:

These records are retrieved by the name of the individuals.

SAFEGUARDS:

Records are accessible only by authorized Foundation personnel.

RETENTION AND DISPOSAL:

These records are maintained for an indefinite duration.

SYSTEM MANAGER AND ADDRESS:

General Counsel, National Science Foundation, Office of the General Counsel, 4201 Wilson Boulevard, room 1265, Arlington, Virginia 22230.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in the system should write to the system manager at the above address.

RECORD ACCESS PROCEDURES:

See "notification procedures" above.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest the contents of records in this system should contact the system manager at the above address.

RECORD SOURCE CATEGORIES:

Federal, State and local officials, private persons, respondents and their legal representatives.

[FR Doc. 1724 Filed 1–26–94; 8:45 am]

BILLING CODE 7555–01

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259 and 50–296]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR-33 and DPR-68 issued to the Tennessee Valley Authority (the license) for operation of the Browns Ferry Nuclear Plant (BFN) Units 1 and 3, located in Limestone County, Alabama.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated September 2, 1993, with additional information provided on December 17, 1993, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." Under the proposed exemption, the licensee would be relieved of requirements to provide positive containment access control by a guard or watchman during periods of frequent access. BFN Units 1 and 3 have been shut down since March 1985 for modifications required to put the units in compliance with applicable regulatory requirements. The proposed exemption would be in effect until immediately before the licensee loads fuel in the reactors when the required modifications are completed.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an outside physical protection system and security organization. Containment access controls specified by 10 CFR 73.55(d)(8) require that any time frequent access to the containment is required, positive controls are maintained by a guard or watchman to assure only authorized personnel or materials are permitted into the containment.

BFN Units 1 and 3 have been defueled since September 1985 and February 1987, respectively. These reactors have been shut down since March 1985 for modifications required to put the units in compliance with applicable regulatory requirements. A substantial number of the required modifications require frequent containment access. Therefore, the licensee has maintained a guard at a controlled access location to fulfill the requirements of 10 CFR 73.55(d)(8).

The licensee believes that the 10 CFR 73.55(d)(8) requirements are too restrictive, given the unique status of Browns Ferry Units 1 and 3 and the other controls which are or will be exercised to ensure the reactors are returned to service in a safe manner. Presently, the reactors are defueled, which reduces the radiological hazard potential within the containment such that sabotage could not create a substantial offsite radiation dose. The licensee will perform extensive return-to-service testing on all safety-related systems. This testing ensures that plant components can properly perform their intended design functions. After modifications are completed, the licensee will also perform security inspections to detect sabotage or introduction of foreign material which may have occurred during the recovery effort.

An exemption from 10 CFR 73.55(d)(8) is required to permit the licensee to relax containment access controls during the recovery of Browns Ferry Units 1 and 3. The proposed exemption will not reduce requirements for containment access controls for Browns Ferry Unit 2.

Environmental Impacts of the Proposed Action

The licensee has indicated that during the period of the exemption, the reactors will be maintained in a defueled condition. Postulated radiological sabotage within the containment in this condition cannot result in significant offsite radiation doses. Therefore, the environmental impact of this sabotage is negligible. There is no other change in environmental impact while the reactors are defueled.

The licensee has also indicated that, as the reactors are refueled and returned to service, it will perform extensive testing and inspections which will detect latent sabotage which could adversely impact plant operations. The licensee will test safety-related systems as they are returned to service to assure they are capable of fulfilling their design functions. The licensee will also perform security inspections to determine if unauthorized and potentially dangerous materials such as explosives have been introduced. These measures provide confidence that the reactors will operate as intended by their design. Therefore, the environmental impact of plant operations after the period of the exemption is unchanged from normally anticipated conditions.

Accordingly, the Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact. With regard to potential non-radiological impacts the proposed exemption does not affect non-radiolgical plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to the exemption will have either no significantly different environmental impact, or greater environmental impact.

The principal alternative would be to deny the requested exemption. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the "Final Environmental Statement, Browns, Ferry Nuclear Plant Units 1, 2, and 3," dated September 1, 1972.

Agencies and Persons Contacted

The NRC staff has reviewed the licensee's request dated September 2, 1993, as supplemented on December 17, 1993. The NRC staff did not consult with other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for the exemption dated September 2, 1993, as supplemented on December 17, 1993, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland this 19th day of January 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 94-1694 Filed 1-26-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al., Clinton Power Station, Unit 1; Proposed Corporate Restructuring

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the proposed corporate restructuring of Illinois Power Company (IP), the owner and licensee for the Clinton Power Station, Unit 1. By letter dated November 11, 1993, Sidley & Austin, acting as counsel to IP, informed the Commission that the Board of Directors has proposed a corporate restructuring plan to be presented at the February 9, 1994, annual shareholders meeting. If a majority of IP shareholders approve the plan, IP will become a wholly-owned subsidiary of a new holding company, IP Holding Company, effective on or about April 1, 1994. IP would remain as holder of the license for the Clinton Power Station. If the plan is approved, the common stock of IP will be converted on a share-for-share basis into common stock of the holding company. According to the proposed plan, the current IP Board of Directors will serve in the same capacity for the holding company, and there will be no significant change in ownership, management, or sources of funds for operation of the Clinton Power Station.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license, after notice to interested persons. Such action is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to have the control of the license and that the transfer of such control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

Dated at Rockville, Maryland, this 19th day of January 1994.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-1695 Filed 1-26-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces a meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on January 31, 1994, at 2 p.m., in the auditorium at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415-0001. The auditorium is located on the ground level. The Council has determined that this meeting is necessary to complete its work on the development of proposals to the President by January 31, 1994, as required by section 1(b)(2) of Executive Order 12871, and is therefore being announced with less than 15 days' advance notice.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., room 5F12, Washington, DC 20415-0001, (202) 606-1800.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop proposals to the President on legislative changes to the Federal Labor-Management Relations Statute that are necessary to achieve the partnership objectives outlined in the National Performance Review (NPR) report. The Council will also make proposals concerning legislation consistent with the NPR's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system and the performance management system.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments on the principles and features that should be embodied in any of these legislative proposals. We are especially interested in suggestions and ideas to ensure that the proposed legislation carries out the intent of the NPR, as discussed in its report. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by January 28 in order to be considered at the January 31 meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94-1650 Filed 1-26-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 265-19]

Securities Exchange Act Release No. 34-33496

SUBJECT: Consumer Affairs Advisory Committee.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of establishment of the Consumer Affairs Advisory Committee.

SUMMARY: The Chairman of the Commission, with the concurrence of the other members of the Commission, has established a Consumer Affairs Advisory Committee to advise the Commission on the interests and concerns of individual investors in the U.S. securities markets.

DATES: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan G. Katz, Secretary, 202/272-2600.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Securities and Exchange Commission ("Commission") has directed publication of this notice that Chairman Arthur Levitt, with the concurrence of the other members of the Commission, has established the Consumer Affairs Advisory Committee. Chairman Levitt certifies that the creation of the Committee is necessary and in the public interest.

The Committee's charter directs the Committee: (1) To advise the Commission regarding the interests and concerns of individual consumers and

investors who participate, directly or indirectly, in the U.S. securities markets, and (2) to advise the Commission on how the Commission's existing and proposed rules and programs could be improved to provide better disclosure and protection to such individual consumers and investors.

To achieve the Committee's goals, members will be appointed that can represent effectively the interests of individual investors with respect to a range of issues. The Committee's membership may include, among others, individuals representing consumer or investor organizations, securities market participants, securities market professionals, regulatory entities and the public at large. The Commission expects that the Committee's members will represent a variety of viewpoints and have varying experience and that the Committee will be fairly balanced in terms of points of view, backgrounds and tasks.

The Committee will conduct its operations in accordance with the Federal Advisory Committee Act. The duties of the Committee shall be solely advisory. Determinations of action to be taken and policy to be expressed with respect to matters upon which the Committee provides advice will be made solely by the Commission.

The Committee will meet at such intervals as are necessary to carry out its functions. It is estimated the meetings of the full Committee will occur approximately six times each year.

The Commission will provide necessary support services to the Committee.

The Committee will terminate two years after its establishment unless, prior to that time, its charter is renewed in accordance with the Federal Advisory Committee Act, or unless the Chairman, with the concurrence of the other members of the Commission, determines that continuance of the Committee is no longer in the public interest.

Fifteen days after publication of this notice in the **Federal Register**, the Commission will file a copy of the Committee's charter with the Chairman of the Commission, the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Energy and Commerce. The Commission will also furnish a copy of the charter to the Library of Congress and place a copy in the Commission's Public Reference Room.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-1673 Filed 1-26-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33495; International Series No. 629 File No. SR-Amex-93-40]

Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to Stock Upside Note Securities ("SUNS")

January 19, 1994.

I. Introduction

On November 18, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Stock Upside Note Securities ("SUNS"),[3] the return on which is based on the Lehman Brothers Global Emerging Telecommunications Basket ("Telecommunications Basket").[4] Notice of the proposal appeared in the **Federal Register** on December 6, 1993.[5] No comment letters were received on the proposed rule change. On January 6, 1994, the Amex filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposal.

II. Description of the Proposal

Under section 107 of the Exchange's Company Guide ("Guide"), the Amex may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants. The Amex is proposing to list for trading under section 107 of the Guide, Telecommunications Basket SUNS.[7]

The Telecommunications Basket SUNS will conform to the listing guidelines under Section 107 of the Guide, which provide that issues must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 shareholders; and (3) a market value of at least $20 million. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, and stockholder's equity of at least $10 million. In the case of an issuer which is unable to satisfy the earnings criteria stated in section 101 of the Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

SUNS are non-callable senior hybrid debt securities of Lehman Brothers. SUNS will have a term of four to seven years and will pay an annual coupon based on the annual appreciation of the Telecommunications Basket. At maturity, holders of SUNS also will receive from the issuer the entire principal amount of the note. Telecommunications Basket SUNS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] "SUNS," "Stock Upside Note Securities," and "Global Emerging Telecommunications Basket" are registered service marks of Lehman Brothers Holdings, Inc. ("Lehman Brothers").

[4] The Telecommunications Basket is a static portfolio consisting of 24 equity securities listed as: (1) Common shares outside of the United States in the countries having the greatest exchange trading volume for the shares; (2) common shares in the United States; or (3) as American Depositary Receipts ("ADRs") in the United States. An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. The securities which comprise the Telecommunications Basket are securities issued by corporations formed under Argentina, Brazil, Canada, Chile, France, Hong Kong, Israel, Italy, Malaysia, Mexico, New Zealand, the Philippines, Spain, Sweden, Thailand, the United States, and the United Kingdom.

[5] See Securities Exchange Act Release No. 33255 (November 18, 1993), 58 FR 64347 (December 6, 1993).

[6] Amendment No. 1 to the proposed rule change states that: (i) if the entity that is used to calculate the value of the Telecommunications Basket is required to use the bid and offer price for a portfolio security to determine the market price of such portfolio security, then that entity shall not use any bid or offer price announced by Lehman Brothers or any affiliate of Lehman Brothers; and (ii) Lehman Brothers will monitor the volatility of the Telecommunications Basket securities and will discuss with the Commission the need to increase the frequency of portfolio value dissemination if the volatility of the Telecommunications Basket increases materially. See Letter from John Riley, Simpson Thacher & Bartlett, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated January 6, 1994 ("January 6 Letter").

[7] The Commission recently approved a proposed rule change submitted by the New York Stock Exchange, Inc. ("NYSE") for the listing and trading of two similar products: (1) Market Index Target Term Securities ("MITTS") based upon a global portfolio of securities representing telecommunications companies; and (2) MITTS based upon a portfolio of securities of European companies. *See* Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993), respectively (collectively "MITTS Approval Orders").

interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Telecommunications Basket.

According to the Amex, Telecommunications Basket SUNS will allow investors to combine the protection of the principal amount of the SUNS with potential additional payments based upon the performance of a portfolio of securities representing 24 highly capitalized global telecommunications companies. In particular, the proposed Telecommunications Basket SUNS will provide 100% principal protection of the original issue price at maturity with the opportunity to participate in any upside appreciation of the underlying Telecommunications Basket during the term of the note.

The Telecommunications Basket consists of securities of 24 global telecommunications companies that have significantly different levels of market capitalization, ranging from a high of approximately US$77.5 billion for American Telephone & Telegraph Company to a low of approximately US$616 million for Champion Technology.[8] The securities in the Telecommunications Basket include the common stock of five U.S. telecommunications companies,[9] the common stock of three foreign issuers (which stocks are listed and trade on, or traded over the facilities of, U.S. securities markets),[10] ADRs of nine foreign issuers,[11] and the ordinary shares of seven foreign issuers traded primarily on or through non-U.S. securities markets.[12] The average daily trading volume for the components of the Telecommunications Basket for the period from August 1993, through October 1993, ranged from a high of approximately 2.4 billion shares for Telecommunications Brasileiras S.A., to a low of approximately 45,000 shares for Tadiran. In addition, the public float[13] as of November 2, 1993 for the securities comprising the Telecommunications Basket ranged from a high of approximately US$74.8 billion for American Telephone & Telegraph Company to a low of approximately US$275 million for Tadiran.[14]

At the outset, each of the securities in the Telecommunications Basket will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the portfolio. Accordingly, each of the 24 companies included in the Telecommunications Basket will represent approximately 4.167% of the total portfolio at the time of issuance.

The multiplier for each security in the Telecommunications Basket will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[15] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Telecommunications Basket no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Lehman Brothers will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the Telecommunications Basket is acquired by another company, Lehman Brothers shall thereafter assign a value to the share of the acquired company's securities equal to the value per share at which time the acquisition takes place. If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Telecommunications Basket so long as a market price for such security is available. If a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the daily portfolio value and the closing portfolio value of the Telecommunications Basket, for so long as no market price exists for that security.[16]

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[8] These values are as of November 2, 1993.

[9] The U.S. companies include: ALLTEL, AT&T, Bell Atlantic Corporation, GTE Corporation, and MCI Corporation. The common stock of these issuers is listed and traded on NYSE, the Exchange, or traded through the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system's National Market System ("NMS").

[10] The foreign common stock issues traded on or over the facilities of U.S. securities markets include: Newbridge Networks Corporation (Canada), Philippine Long Distance Telephone Company (Philippines), and Tadiran (Israel). Newbridge Networks is traded through NASDAQ/NMS, Philippine Lone Distance Telephone is traded on the Amex, and Tadiran is traded on the NYSE.

[11] Each of the ADRs is either listed or traded on, or traded over the facilities of, U.S. securities markets. The ADRs represent Alcatel Alsthom Compagnie Generale d'Electricite; Cable & Wireless; Compania de Telefonos de Chile S.A.; Hong Kong Telecommunications, Ltd.; L.M. Ericsson Telephone Company, Inc.; Telecom Corporation of New Zealand, Ltd.; Telefonica de Espana; Telefonos de Mexico, S.A. de C.V.; and Vodaphone Group Plc.

[12] The ordinary shares of the foreign issuers are: Advanced Info. Services (Thailand); Champion Technology (Hong Kong); STET (Italy); Telecom Argentina (Argentina); Telecomunicacoes Brasileiras (Brazil); Telefonica de Argentina (Argentina); and Telekom Malaysia (Malaysia).

[13] As used herein, "public float" is defined as shares outstanding as reported by the issuer, minus treasury stock, times the security price.

[14] Lehman Brothers has represented that public float information is not readily available for the seven foreign components traded outside of the U.S. *See* Letter from John Riley, Simpson Thacher & Bartlett, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated December 16, 1993.

[15] Lehman Brothers will adjust the multiplier of any Telecommunications Basket security if the security is subject to a stock split or reverse split or similar adjustment in the case of an ADR, to equal the product of the number of shares issued with respect to one share of the Telecommunications Basket security, or the number of receipts issued with respect to an ADR, and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier. In the case of a listing of ADRs on a national securities exchange in the United States or on NASDAQ/NMS, the multiplier will be adjusted so that the new multiplier will equal the conversion of ordinary shares to ADRs. The listed ADRs then will be used to calculate the value of the Telecommunications Basket.

[16] Lehman Brothers will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

The value of the Telecommunications Basket will initially be calculated once a day either by an affiliate of Lehman Brothers or by an independent calculation agent ("Pricing Agent"). These values will be disseminated to investors once a day after 5:00 p.m. Eastern Standard Time. The portfolio value, for any day, will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.[17] In addition, if the Pricing Agent is an affiliate of Lehman Brothers, Lehman Brothers has undertaken to implement certain surveillance and compliance procedures with respect to the dissemination of the portfolio value, requiring that the portfolio value be announced only through public dissemination and restricting the access of the affiliate's trading desk to the portfolio value determined by the affiliate.[18]

Telecommunications Basket SUNS will be denominated in U.S. dollars and will entitle holders to receive annual coupon payments based upon the percentage change in the value of the Telecommunications Basket from the beginning to the end of the year. If the market value of the portfolio has declined, the holder will receive not less than 100% of the original principal amount of the security. Like the MITTS listed on the NYSE, Telecommunications Basket SUNS may not be redeemed prior to maturity and are not callable by the issuer. Holders of Telecommunications Basket SUNS will be able to cash-out of their investment by selling the security on the Amex. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Telecommunications Basket and also on such other factors as the level of interest rates, the volatility of the value of the Telecommunications Basket, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Lehman Brothers.[19]

Because Telecommunications Basket SUNS are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of Telecommunications Basket SUNS. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Telecommunications Basket SUNS.[20] Second, consistent with Amex Rule 411, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Telecommunications Basket SUNS prior to, or promptly after, the completion of the transaction. Third, Telecommunications Basket SUNS will be subject to the equity margin rules of the Exchange. Fourth, prior to trading Telecommunications Basket SUNS, the Exchange will distribute a circular to the membership, in the form reviewed by the Commission, providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Telecommunications Basket SUNS and highlighting the special risks and characteristics of the Telecommunications Basket SUNS.

[17] The procedures for determining the prices of the components of the Global Telecommunications Basket will be the same as those approved by the Commission for MITTS (*see* MITTS Approval Orders, *supra* note 7). Specifically, the market price used for calculation of the portfolio value is the last reported sale price if the portfolio security is listed and traded on a national securities exchange, or is traded through NASDAQ/NMS.

If the portfolio security is a security of a foreign issuer or is an ADR that is not listed on a national securities exchange in the U.S. or is not a NASDAQ/NMS security, then the market price is the last reported sale price on the securities exchange on which the portfolio security is listed having the greatest volume of trading for the preceding calendar month as determined by the Pricing Agent, provided that if such last reported sale price is for a transaction that occurred more than 4 hours prior to the close of such exchange, then the market price is the average of the last available bid and offer price on such exchange.

If a foreign-issued portfolio security is not listed or trading on any securities exchange or if the last reported sale price or bid and offer are not obtainable, then the market price is the last reported sale price on the over-the-counter ("OTC") market with the greatest volume of trading as determined by the Pricing Agent. However, if such last reported sale price is for a transaction which occurred more than 4 hours prior to when trading in such OTC market typically ends, then the market price is the average of the last available bid and offer price of the three most active dealers, as selected by the Pricing Agent. See Letter from John Riley, Simpson Thacher & Bartlett, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated January 13, 1994 ("January 13 Letter").

If the Pricing Agent is required to use the bid and offer price for a portfolio security to determine the market price of such portfolio security, then the pricing Agent will not use any bid or offer price announced by the Pricing Agent or any other affiliate of Lehman Brothers. See January 6 Letter, *supra* note 6.

[18] See January 13 Letter, *supra* note 17.

[19] Lehman Brothers will deposit registered global securities representing Global Telecommunications Basket SUNS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC. See January 13 Letter, *supra* note 17.

[20] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[21] Specifically, the Commission believes that providing for exchange-trading of Telecommunications Basket SUNS will offer a new and innovative means of participating in the market for global telecommunications securities. In particular, the Commission believes that Telecommunications Basket SUNS will permit investors to gain equity exposure in global telecommunications companies, while at the same time, limiting the downside risk of the original investment.[22] For these reasons, as well as those discussed in the MITTS Approval Orders,[23] the Commission finds that the listing and trading of Telecommunications Basket SUNS by the Amex is consistent with the Act.[24]

As with MITTS, Telecommunications Basket SUNS are not leveraged instruments, however, their price will still be derived and based upon the underlying basket of securities. Accordingly, the level of risk involved in the purchase or sale of a Telecommunications Basket SUNS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, as with the MITTS, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Telecommunications Basket SUNS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Telecommunications Basket SUNS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Telecommunications Basket SUNS.

[21] 15 U.S.C. 78f(b)(5) (1988).

[22] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading of new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging, or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[23] See MITTS Approval Orders, *supra* note 7.

[24] See MITTS Approval Orders, *supra* note 7.

The Commission notes that Lehman Brothers intends to have the Pricing Agent publish the value of the Telecommunications Basket once each business day after 5 p.m. Eastern Standard Time for dissemination to electronic reporting services as well as to newspapers and trade publications. Lehman Brothers asserts that the value of a SUNS does not necessarily correlate with the intra-day price moves related to the underlying component securities, largely as a result of the time value to maturity of the SUNS.

As a general matter, the Commission continues to believe that for new derivative products, real-time dissemination of the value of the underlying instrument should be provided to all investors. Nevertheless, the Commission has determined to permit Telecommunications Basket SUNS to trade without real-time dissemination at this time for several reasons. First, a SUNS is not a leveraged product that has its value determined primarily from the underlying securities but rather guarantees recoupment of 100% of the principal amount. Second, factors such as the creditworthiness of the issuer, in addition to price movements in the underlying securities will be relevant in pricing the Telecommunications Basket SUNS. Third, the Telecommunications Basket SUNS should, at least prior to expiration, trade more like a bond or debt security, based on the issuer's ability to perform rather than the value of the Telecommunications Basket.[25] Accordingly, the Commission believes that real-time dissemination of the aggregate market value of the underlying Telecommunications Basket is not necessary at this time but would nevertheless expect Lehman Brothers, along with the Amex, to monitor the product to determine if increased reporting is necessary especially as the product approached maturity.[26]

The Commission realizes that SUNS do not contain a clearinghouse guarantee (as in the case of standardized options), but are instead dependent upon the individual credit of the issuer.[27] This heightens the possibility that a purchaser of Telecommunications Basket SUNS may not be able to receive the promised payment of 100% of the principal upon maturity. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain a minimum aggregate market value of $1 million for its publicly-held shares.[28] In addition, the Exchange's hybrid listing standards further require that Telecommunications Basket SUNS have at least $20 million in market value.[29] In any event, financial information regarding Lehman Brothers, in addition to information on substantially all of the issuers of the underlying securities comprising the Telecommunications Basket, will be publicly available.[30]

The Commission also has a systemic concern, however, that a broker-dealer, such as Lehman Brothers, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of Telecommunications Basket SUNS issuance in relation to the net worth of Lehman Brothers.[31]

The Commission believes that the listing and trading of Telecommunications Basket SUNS should not unduly impact the market for the underlying securities comprising the Telecommunications Basket. First, the underlying securities comprising the portfolio are either well-capitalized stocks, or in the case of ADRS, represent in dollar terms substantial market value.[32] Second, the all but one of the issuers of the underlying securities comprising the Telecommunications Basket, are subject to reporting requirements under the Act, and a large percentage of the portfolio securities are either listed or traded on, or traded over the facilities of, U.S. securities markets.[33] Third, the Exchange has surveillance agreements in place for a large percentage of the securities in the Telecommunications Basket for the sharing of market information.[34] This in addition to the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation. Fourth, Lehman Brothers will not include quotations made by or through Lehman Brothers or its affiliates when calculating the value of the Telecommunications Basket.[35] Lastly, the Pricing Agent will agree to restrict information with respect to all calculations of portfolio securities so that individuals trading such securities on behalf of the Pricing Agent will only be able to receive such information through public means and not prior to its release to the public.[36]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission finds that the proposal, as amended, is substantially similar to the MITTS products which were previously approved by the Commission for listing and trading on the NYSE. Furthermore, this proposal was published in the **Federal Register** for the full 21-day comment period without any comments being received by the Commission. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[25] Lehman Brothers has agreed to monitor the volatility of the market price of the Global Telecommunications Basket SUNS in relation to the underlying Global Telecommunications Basket and to discuss with the Commission the need to implement more frequent portfolio value dissemination in the event of an increase in intra-day volatility. See January 6 Letter, *supra* note 6.

[26] Notwithstanding the above, the Commission still believes that it is useful and beneficial for all investors and market participants to have access to the value of the portfolio on a real-time basis and encourages the Amex and Lehman Brothers to further explore the possibilities in this area.

[27] In this case, the issuer of Telecommunications Basket SUNS will be Lehman Brothers.

[28] See Amex Company Guide § 1003(b).

[29] See Amex Company Guide § 107.

[30] With the exception of one component (Telekom Malaysia), the securities comprising the Telecommunications Basket are either issued by companies that are reporting companies under the Act or subject to a limited exemption under Rule 12g3–2(b) of the Act. See Letter from Benjamin Krause, Senior Vice President, Capital Markets Group, Amex, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated October 25, 1993 ("October 25 Letter").

[31] See MITTS Approval Orders, *supra* note 7.

[32] See supra notes 8–14 and accompanying test.

[33] The Commission notes that 17 of the 24 component securities are traded on the NYSE, Amex, or through NASDAQ/NMS.

[34] The Amex has information sharing agreements with the home markets for all the non-U.S. components included in the Basket except for Advanced Info. Services (Thailand); Philippine Long Distance Telephone Company (Philippines); STET (Italy); and Telefonos de Mexico, S.Z. de C.V. (Mexico). See October 25 Letter, *supra* note 30.

[35] January 6 Letter, *supra* note 6.

[36] See January 13 Letter, *supra* note 17.

Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93-40 and should be submitted by February 17, 1994.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[37] that the proposed rule change (File No. SR-Amex-93-40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-1713 Filed 1-26-94; 8:45 am]

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[Release No. 34-33490; File No. SR-CHX-93-17]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Its Rules Relating to Suspension of Registration of Specialists, Odd-Lot Dealers and Market Makers

January 19, 1994.

I. Introduction

On July 28, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the suspension of registration provisions for specialists, odd-lot dealers, and market makers. On August 19, 1993, the CHX submitted to the Commission Amendment No. 1 to the proposal.[3]

The proposed rule change was published for comment in Securities Exchange Act Release 32888 (September 14, 1993), 58 FR 49341 (September 22, 1993). No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The CHX proposes to amend four Exchange Rules[4] thereby making two primary changes to the rules governing summary suspension of the registration of specialists, odd-lot dealers and market makers. The Exchange proposes to add market makers to the list of members who may have their registration summarily suspended, and it proposes to limit the authority to summarily suspend the registration of specialists, odd-lot dealers and market makers to the President of the Exchange.

Currently, unlike the case of specialists and odd-lot dealers, there is no authority to summarily suspend the registration of a market maker. Current Exchange Rules dealing with market maker registration only provide for the termination or suspension of a market maker pursuant to Article XVII by the Floor Procedure Committee (or other committee appointed for the purpose by the Board) upon a finding of unsatisfactory performance.[5] The current provisions provide for an initial meeting with Exchange Officials to encourage and assist the market maker, and for a hearing prior to the termination of the market maker's registration.

The Exchange is replacing the current provisions governing the suspension of market maker registration with new summary procedures for the termination of market maker registration.[6] These new summary procedures provide that whenever it appears to, or is called to the attention of, the President of the Exchange that a registered market maker is violating any of the Rules of the Exchange or the federal securities laws or is conducting market maker business in an unethical manner, the President shall, without the necessity of previous notice, suspend the registration of such market maker pending the opportunity for a prompt hearing on the apparent violation in accordance with Article XII of the Rules of the Exchange. The procedures further provide that notwithstanding the opportunity for a hearing, upon imposition of the summary suspension of registration, the Exchange shall provide notification thereof to the Commission. The affected market maker[7] may immediately file a request with the Commission for a stay of imposition of the suspension of registration.[8] The proposed rule concludes by stating that the Floor Procedure Committee may suspend or terminate any such registration based upon a finding, after an opportunity for a hearing, in accordance with Article XVII, that the market maker has not satisfactorily performed his responsibilities as defined in the federal securities laws and the rules and policies of the Exchange.

The Exchange states that these changes to the provisions governing the suspension and termination of market maker registration will serve to conform the market maker registration suspension and termination provisions to those of the specialist and odd-lot dealer.

The proposed rule change also changes current Exchange Rules governing the summary suspension of the registration of specialists and odd-lot dealers. Currently, the rules allow for summary suspension by either the Floor Procedure Committee or the President of the Exchange. Such Rules specify that whenever it shall appear or be called to the attention of any member of the Committee on Floor Procedure or the President that a specialist, co-specialist, relief specialist or odd-lot dealer is violating any of the Rules of the Exchange or the federal securities laws or is conducting business in an unethical manner, the member of the Floor Procedure Committee or the President shall, without the necessity of previous notice, suspend the registration of such party pending an opportunity for prompt hearing on the apparent violation in accordance with Article XII of the Rules of the Exchange.[9]

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[37] 15 U.S.C. 78s(b)(2) (1988).

[38] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Cheryl Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, dated August 18, 1993. Amendment No. 1 made certain clarifying changes to the proposal.

[4] The CHX proposes to amend Article XXX, Termination of Registration, Rule 8; Article XXXI, Termination of Registration, Rule 14; Article XXXIV, Registration and Application, Rule 13, Interpretations and Policies .02; and Article XXXIV, Suspension and Termination, Rule 16.

[5] The registration of a market maker may be terminated, pursuant to Article XXXIV Registration and Application, Rule 16, upon a finding that he violated the Constitution or Rules of the Exchange or failed adequately to fulfill his responsibilities as a registered market maker. See also, Article XXXIV, Rule 13, Interpretations and Policies .02 which provides that the registration of a market maker may be suspended or terminated by the Equity Floor Procedure Committee in accordance with the provisions of Article XVII.

[6] In this regard, the Exchange proposes to eliminate the language in Article XXXIV, Rule 13, Interpretation .02, and Article XXXIV, Rule 16 and replace it with new summary procedures to be described in Article XXXIV, Rule 16.

[7] In Amendment No. 1, the CHX replaced "the affected odd lot dealer" with "the affected market maker." *See* footnote 3.

[8] The proposed rule text provides that this may be done in accordance with such procedures as the Commission may provide.

[9] Article XXX, Termination of Registration, Rule 8 governs specialists, co-specialists and relief specialists, and Article XXXI, Termination of Registration, Rule 14 governs odd-lot dealers. Both Rule 8 and Rule 14 also provide that, notwithstanding the opportunity for hearing, upon imposition of the summary suspension of registration, the Exchange shall provide notification thereof to the Commission and the affected party may immediately file a request with the Commission for a stay of imposition of the suspension of registration in accordance with such procedures as the Commission may provide. Both Rules 8 and 14 further provide that the Committee on Specialist Assignment may suspend or terminate any such registration based upon a finding (after the

The Exchange is eliminating the language in the suspension of registration rules governing specialists, co-specialists, relief specialists and odd-lot dealers which provides that any member of the Floor Procedure Committee may take action to summarily suspend the registration of such parties. The amended rule, therefore, permits only the President of the Exchange to summarily suspend the registration of specialists, co-specialists, relief specialists and odd-lot dealers. This corresponds to the new market maker summary suspension provisions previously discussed. The Exchange believes that due to the serious nature of summary suspension of registration, this type of authority is appropriately exercised only by the President of the Exchange.

III. Discussion and Conclusion

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (5), (6) and (7) of the Act.[10] Section 6(b)(5) of the Act, requires *inter alia*, that, the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The Commission believes that the addition of market makers to the list of persons who may have their registration summarily suspended will help to prevent fraudulent and manipulative acts by allowing the Exchange to take immediate action against a market maker who is acting unethically or in violation of Exchange rules or federal securities laws or regulations.

Section 6(b)(6) of the Act provides that the rules of the Exchange should provide that exchange members and persons associated with its members be appropriately disciplined for violation of the provisions of the Act or rules and regulations thereunder or the rules of the exchange by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The Commission believes that the summary suspension of market maker registration is an appropriate disciplinary action in cases where the market maker has acted unethically, violated Exchange Rules or the federal securities laws, since specialists and odd-lot dealers are already subject to such action and there is no reason to distinguish among the three groups. In addition, recent experience has shown the Exchange that summary suspension authority is needed for market makers as well as for other exchange members.

Section 6(b)(7) of the Act provides, *inter alia*, that the rules of an exchange must provide a fair procedure for the disciplining of members and persons associated with members. The Commission believes that it is fair to limit the power to summarily suspend member registration to the Exchange President. The Commission agrees that, due to the serious nature of summary suspension, it is appropriate to limit summary suspension ability to a senior Exchange official. The rules also provide adequate due process to persons summarily suspended by providing the opportunity for a prompt hearing on the matter and the ability to appeal any action taken to the Commission.[11]

It is therefore ordered, pursuant to section 19(b)(2)[12] of the Act, that the proposed rule change (SR–CHX–93–17) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1674 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33494; File No. SR–CBOE–93–41]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Opening Transactions in Exchange-Traded Options and Duties of Designated Primary Market Makers

January 19, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, Interpretation and Policy .01 to CBOE Rule 6.2, "Trading Rotations," provides that the opening transaction in each class of options traded on the Exchange shall be held promptly following the opening transaction in the underlying security on the principal exchange where the security is traded. The rules of the other options exchanges allow opening rotations to commence following the opening of the underlying security.[1] In order to conform its rules to the rules of the other options exchanges, the CBOE proposes to amend Interpretation and Policy .01(a) to state that the opening rotation in each class of options shall be held promptly following the opening of the underlying security on the principal market where the security is traded. Under proposed paragraph (d) to Commentary .01, an underlying security shall be deemed to have opened on the principal market where it is traded if the market has (i) reported a transaction in the underlying security or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever first occurs. In addition, the CBOE proposes to amend Interpretation and Policy .01 to provide that any member appointed as a Designated Primary Market-Maker ("DPM") shall participate in opening rotations to the same extent as an Order Book Official ("OBO").

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

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opportunity for a hearing in accordance with Article XVII) that the party has not satisfactorily performed his responsibilities as defined in the federal securities laws and the rules of the exchange.

[10] 15 U.S.C. 78f(b) (5), (6) and (7) (1988).

[11] See note 8 and accompanying text.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1992).

[1] See American Stock Exchange ("Amex") Rule 918(a)(1); New York Stock Exchange ("NYSE") Rule 717(a); Pacific Stock Exchange ("PSE") Rule 6.64, Commentary .01; and Philadelphia Stock Exchange ("PHLX") Rule 1047, Commentary .01.

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 6.2, Interpretation and Policy .01 to allow opening rotations in Exchange-listed options to commence upon the earlier of the following events: (i) the report of an opening transaction in the underlying security on the primary market, or (ii) the dissemination of opening quotations by such market. In addition, the CBOE proposes to amend Interpretation and Policy .01 to provide specifically that a DPM shall participate in opening rotations to the same extent as an OBO.

Currently, CBOE Rule 6.62, Interpretation and Policy .01 provides that the opening rotation in each class of option contracts traded on the CBOE will commence promptly following the opening transaction in the underlying security. The rules of the other options exchanges provide that opening rotations will commence following the opening of the underlying security.[2] The CBOE states that the other options exchanges interpret their rules to permit the commencement of opening rotations upon the earlier of either a reported transaction in the underlying security or a reported market quote for the security, provided that the primary market has not given any indication of a delayed opening. The CBOE's proposal is designed to conform the commencement of opening rotations at the CBOE to that of the other options exchanges, thereby alleviating the risk of inter-market pricing disparities.

In addition, the proposal modifies Interpretation and Policy .01 to provide specifically that any member appointed as a DPM shall participate in opening rotations to the same extent as an OBO. The CBOE believes that this amendment states expressly what is implied by paragraph (c) of CBOE Rule 8.80, "Modified Trading System," which provides, in part, that when acting as an OBO in appointed options classes, the DPM shall fulfill all obligations associated with the OBO's functions.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to clarify the meaning of existing CBOE rules and to conform the CBOE's rules to the rules of the other options exchanges, thereby contributing to a fair and orderly market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The CBOE states that the proposal is intended to minimize the risk of pricing disparities at the opening of trading on the Exchange. With the expansion of multiple trading of options as provided in Rule 19c-5 of the Act, the CBOE believes it is imperative that the CBOE conform the commencement of its opening rotations to the procedures of the other options exchanges. In addition, the CBOE states that its proposal raises no new regulatory concerns because the Exchange is adopting procedures that have been adopted previously by the other options exchanges.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder[3] in that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market by conforming the CBOE's opening procedures to those of the other options exchanges. Specifically, the CBOE's proposal will allow the Exchange to commence opening rotations upon the earlier of either a reported transaction in the underlying security or a reported market quote for the security (provided that the primary market has not indicated a delayed opening), rather than waiting for an opening transaction in the underlying security, as required currently under CBOE Rule 6.2, Interpretation and Policy .01.[4]

The Commission believes that the proposed rule change should help to alleviate the risk of pricing disparities among the options exchanges and should allow the CBOE to compete effectively with the other options exchanges for order flow.

In addition, by allowing the CBOE to commence opening rotations after the opening of the underlying security on the primary market where it is traded, the Commission believes that the proposal should decrease the time required to obtain opening market quotations and should allow free trading to commence as quickly as possible after the opening. As the Commission has noted in the past, expedited free trading will allow market makers to engage in hedging strategies as soon as possible after the opening and will result in the prompt execution of customer orders.[5]

The Commission also believes that the proposal clarifies Interpretation and Policy .01 and CBOE Rule 8.80(c) by providing specifically that a DPM shall participate in opening rotations to the same extent as an OBO, thereby eliminating potential confusion concerning the obligations of a DPM during opening rotations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the proposal amends the CBOE's rules to conform the CBOE's opening rotations to the procedures used on the other options exchanges. The Commission does not believe that the CBOE's proposal raise new regulatory issues. In addition, the Commission finds good cause for approving the CBOE's amendment regarding the obligations of DPMs under CBOE Rule 6.2, Interpretation and Policy .01 because the amendment clarifies the existing obligations of DPMs under CBOE Rule 8.80.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the

[2] See note 1, *supra*.

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] The CBOE states that only quotations disseminated at the opening on a trading day will be deemed to have opened the market in an underlying security. Stale quotations disseminated on a prior trading day will not be deemed to have opened the market in an underlying security. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Richard Zack, Branch Chief, Options Branch, Division of Market Regulation, Commission, dated January 14, 1994.

[5] See Securities Exchange Act Release No. 29652 (September 4, 1991), 56 FR 46454 (order approving File No. SR-CBOE-91-29).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 17, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR-CBOE-93-41), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-1677 Filed 1-26-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33498; File No. SR-MSRB-94-01]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Suitability of Recommendations

January 21, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 7, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to strengthen the MRSB's rules governing customer suitability. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing amendments to rule G-19, concerning suitability of recommendations and rule G-8 concerning recordkeeping. The proposed rule change: (1) Clarifies and strengthens the existing language of rule G-19 that requires suitability determinations to be made when recommending transactions to customers; (2) clarifies the obligation of dealers to make reasonable efforts to obtain specific types of customer suitability information for all accounts that are not "institutional accounts" (*i.e.*, retail accounts); and (3) clarifies the definition of "institutional account."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is designed to strengthen the Board's customer suitability rule. In a letter dated May 8, 1992, the Commission's Division of Market Regulation asked the Board to review the requirements of rule G-19 on suitability of recommendations.[1] In September 1992, the Board published a Request for Comments on a number of customer protection issues, including the application of rule G-19 to customer transactions. After reviewing these matters, the Board decided that rule G-19 embodies the appropriate general standard for dealers in making recommendations to customers. Nevertheless, the Board recognized there was a perception that certain provisions of the rule could be viewed as permitting recommendations to go forward without proper regard to the nature of the security being recommended and the customer to whom it is recommended. Accordingly, at the May 1993 Board meeting, the Board approved a Request for Comments on draft amendments to clarify and strengthen the suitability requirements of rule G-19. The draft amendments were approved at the November 1993 Board meeting and form the basis of the proposed rule change.

Rule G-19 generally requires that, before making any recommendation to a customer, a dealer must first determine that the proposed transaction is suitable for the customer. To strengthen rule G-19, the proposed rule change eliminates two provisions from the rule which, in effect, are exceptions to this general requirement. The first such provision permits a dealer to make a recommendation when a customer refuses to provide sufficient information about himself for the dealer to determine that the recommendation is suitable for the customer. The provision states that a recommendation can go forward in this case as long as the dealer has no reasonable grounds to believe and does not believe that the recommendation is unsuitable (the "not unsuitable" provision). Although the Board did not conclude that this provision was the cause of customer protection problems (*i.e.*, there was no evidence that dealers relied on this provision to make unsuitable recommendations), the Board believed that the provision should be deleted to avoid any ambiguities regarding a dealer's obligation to make a suitability determination. Eliminating the provision also will prevent any future use of the provision as an excuse for unsuitable recommendations.

The second provision of rule G-19 that is removed by the proposed rule change provides that a dealer, notwithstanding its determination that a transaction is not suitable for a customer, may, after so informing the customer of this, nevertheless respond to the customer's requests for investment advice and execute transactions at the direction of the customer. This "notwithstanding" provision allows dealers to recommend specific municipal securities to investors who want to invest in municipal securities even after being informed by the dealer that, based on their financial circumstances, investments in municipal securities would not be suitable. While there have been no reported problems associated with this provision, the Board, nevertheless, believed that this exemptive provision also should be deleted to strengthen the suitability rule.

The Board also reviewed and clarified the customer data inquiries that are necessary for non-institutional and institutional accounts. For non-institutional (*i.e.*, retail) accounts, the

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[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1993).

[1] Letter from William H. Heyman, Director, Division, Commission, to Christopher A. Taylor, Executive Director, MSRB (May 8, 1992).

proposed rule change clarifies that dealers must make reasonable efforts to obtain the following information: the customer's financial status, tax status, investment objectives and such other information used or considered to be reasonable and necessary by the dealer in making recommendations to the customer. For some institutional customers, however, these specific information requests may not be appropriate. For example, the "tax status" of a tax-exempt bond fund generally is not relevant to a suitability determination. Therefore, the proposed rule change does not provide a specific list of items that must be requested from all institutional accounts, but does state that dealers must obtain appropriate and sufficient data from each institutional customer to make a suitability determination for each transaction that is recommended (as also is required for non-institutional accounts).

Finally, the proposed rule change revises the definition of "institutional account" contained in rule G–8. This definition is used in rule G–19, by cross-reference. This amendment would make the Board's definition of institutional account the same as the National Association of Securities Dealers' ("NASD") definition for purposes of suitability determinations. Accounts that do not qualify as "institutional accounts" (*i.e.*, retail accounts) would be subject to the specific information inquiries described above.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act which provides that the Board's rules:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments and to perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will protect investors and the public interest because it is designed to ensure that dealers, before making a recommendation to a customer, make a determination that the municipal securities transaction is suitable.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change will have an equal impact on all dealers, the Board believes that the proposed rule change will not have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

September 1992 Request for Comments

In September 1992, as part of the Board's general review of customer protection measures, the Board requested comment on potential problem areas in the municipal securities market and suggestions for how customer protection could be improved. Specific questions were asked about the effectiveness of rule G–19 and the Board obtained various comments on the "not unsuitable" provision of rule G–19 from Merrill Lynch, North American Securities Administrators Association, Barre & Co., Griffen, Kubik, Stephens & Thompson, and the Public Securities Association.

While some of these commentators at that time believed that the "not unsuitable" provision should be deleted, other commentators believed it should be retained because some customers do not wish to provide certain information about themselves. Specifically, two commentators believed that removing the provision would not be a problem and would make the Board's rule consistent with normal practice in other securities markets. Three commentators noted that some customers do not want to provide their financial information to a dealer. One of those commentators indicated, however, that "in the vast majority of cases, dealers do routinely obtain information for each customer account reflecting net worth, income level and investment objectives."

August 1993 Request for Comments

In August 1993, the Board published for comment the proposed rule change. Comment letters were received from Fidelity Investments, First Interstate Bank of Oregon, Heitner Corporation, Lehman Brothers, Liberty Bank and Trust Company of Tulsa, Merrill Lynch, and the Securities Department of Arkansas.

Comments on the General Approach of the Proposed Rule Change

In general, the commentators' reaction to the approach taken by the proposed rule change was favorable. One commentator agreed with the Board's approach by stating that the proposed rule change would address a "difficult problem" by deleting the "not unsuitable" and "notwithstanding" provisions from the current suitability rule. Another commentator noted that rule G–19 "as reformulated by the Board sets forth an appropriate affirmative standard." Two other commentators also expressed general support for the approach taken by the proposed rule change.

Two commentators expressed reservations over removal of the "not unsuitable" and the "notwithstanding" provisions. One commentator opposed both changes because of its belief that the majority of its customers are not willing "to divulge their financial strength." Another commentator, while indicating that it does not make recommendations in municipal securities to customers, also believes that the "notwithstanding" provision should be retained because a customer may disagree with a dealer's opinion of unsuitability. That commentator indicated that dealers should be permitted to make recommendations to a customer who has already decided to purchase a municipal security and who asks for assistance in choosing an issue, even if the transaction would be unsuitable for the customer.

While the "not unsuitable" and the "notwithstanding" provisions were initially adopted by the Board in the late 1970s for reasons similar to those cited by the commentators, the Board notes that there have been significant changes in the municipal securities market since that time. The number of retail investors has increased and the introduction of increasing numbers of complex, and in some cases, speculative municipal securities has become a characteristic of today's market. In such an environment, the Board believes that it is critical that dealers have clear policies to ensure that sales personnel do not recommend securities to customers without first establishing the suitability of the transaction. Therefore, the Board believes that the proposed rule change deleting these provisions is necessary.

Comments on Specific Provisions of the Proposed Rule Change

Commentators offered several specific suggestions and sought guidance from the Board in a number of areas of the proposed rule change.

Customer Account Data and Suitability Determinations

The proposed rule change includes an amendment to rule G–19(b) which states that, for retail customers, prior to making a recommendation a dealer must "make reasonable effort to obtain information concerning: (i) The customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable and necessary by such broker, dealer or

municipal securities dealer in making recommendations to the customer." Two commentators were concerned as to what would happen if all such information could not be obtained. As indicated in the Request for Comments, the language of the proposed rule change does not necessarily preclude a dealer from making a recommendation if all items of information enumerated in the proposed amendment to rule G–19(b) cannot be obtained. Given the nature of the transaction (*e.g.*, the nature of the security and the known items of information about the customer), the dealer may have enough customer data to make a specific, affirmative suitability determination for the recommendation, even if the customer refuses to provide some of the requested information. However, reasonable efforts must be made to obtain all customer information listed in the proposed amendment to rule G–19(b), in any event.

As noted above, the amount of customer information that is required to make a suitability determination depends in part upon the nature of the transaction recommended. With respect to some types of transactions—for example, those in more speculative securities—the amount of information needed to make a suitability determination will be greater than if a more conservative recommendation is being made. One commentator requested that the Board provide guidance on this subject by specifying "core" suitability information that must be obtained from a customer even when making a "conservative" recommendation. That commentator also requested that the Board provide specific guidance on what would be considered "more speculative" securities for which more detailed customer account data would be needed.

The proposed rule change to rule G–19(b) states that dealers must make reasonable efforts to obtain certain "core" customer suitability data for recommendations to non-institutional customers including: (i) The customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable and necessary by such broker, dealer or municipal securities dealer in making recommendations to the customer. The Board notes that if, after reasonable efforts, a dealer cannot obtain all such information regarding a customer, but nevertheless desires to proceed with a "conservative" transaction, the dealer must exercise its judgment, based on known information about the customer and the security, as to whether a suitability determination can be made. Furthermore, all information about the customer that is used in making this determination must be recorded in the customer account record under rule G–8(a)(xi)(F).

The Board also believes it to be inadvisable to attempt to provide detailed guidance on whether a particular security or proposed transaction is more "conservative" or more "speculative." The Board notes that dealers will have to make such decisions based on their knowledge of the security and the risks involved in the transaction. Attempts to state a universally applicable formula for such considerations could encourage the substitution of simplistic guidelines for the broader judgment that is sometimes required to determine whether a proposed municipal securities transaction includes a relatively low or high degree of risk.

Unsolicited Transactions

Several commentators requested that the Board provide guidance on how to identify and document "unsolicited" transactions, *i.e.*, transactions that are not recommended. Neither the current version of rule G–19 nor the proposed rule change precludes dealers from executing specific transactions at the request of customers, where no recommendation is made. Thus, the suitability requirements of the proposed rule change would not apply to such "unsolicited" transactions. The Board notes, however, that most municipal securities transactions are made in connection with recommendations. Because of its concern with customer protection and in recognition of the special characteristics of the municipal securities market, the Board views the term "recommendation" (and the application of the Board's suitability requirement) broadly. For example, with respect to transactions occurring after investment seminars and in response to a dealer's advertisements, the Board has indicated that the suitability requirements of G–19 apply "in the same way they apply to all other recommendations made to customers." Thus, although transactions may, in some instances, be "unsolicited" if a customer places an order for a specific security, transactions cannot be considered unsolicited if the order occurs after a dealer has mentioned a specific security to a customer (*e.g.*, in a listing of offerings, an advertisement or in any other communication by the dealer to the customer).

One commentator asked how "unsolicited" orders should be specified in a dealer's records, and whether such orders should always be handled by the dealer "as agent." Board rules do not require dealers to handle specific types of orders as either principal or agent. Rule G–8(a)(vi), however, specifies the recordkeeping requirements for the terms and conditions of an agency order, including the fact that it is an agency order. Similarly, rule G–15(a)(vii) requires the confirmation to state the agency role of a dealer in a transaction. Neither rule G–8 nor rule G–15 has provisions for documenting orders as "unsolicited."

As previously noted, the Board believes that relatively few transactions in municipal securities actually are "unsolicited." While documenting these relatively rare transactions as such on the confirmation and in the dealer's records may be prudent for the dealer's own protection, the Board is concerned that incorporating a requirement in the Board's rules might have the unintended and undesired effect of encouraging the classification of transactions as "unsolicited," even when they are not "unsolicited" under Board rules.

Institutional Accounts

The Board received several comments concerning the proposed definition for institutional account contained in the proposed rule change and the more generally stated suitability standard for institutional accounts. No commentator argued that it was inappropriate to distinguish between institutional and non-institutional investors when obtaining customer account data and making suitability determinations. One commentator believed the proposed standard for institutional investors was appropriate and noted that the information relevant to a suitability determination for a specific institutional account is necessarily a matter of judgment for the dealer. One commentator, however, suggested the establishment of specific minimum requirements for institutional accounts and specifically suggested that dealers should document the customer's investment objectives (including credit quality and maturity standards) and "other information" used or considered reasonable or necessary by the dealer. Another commentator suggested including corporate resolutions, trading authorization, and yearly audited financial statements as required information for institutional customers.

As indicated by several commentators, it is often necessary or advisable to obtain specific kinds of information from an institutional investor. Rule G–8(a)(xi)(F) currently

requires that the customer suitability information used to make a suitability determination be recorded in the customer account record. The proposed rule change to rule G–8 also makes this requirement clear. In addition, rule G–8(a)(xi) also requires other customer account information including, among other things, the customer's name and address, tax identification or social security number and with respect to discretionary accounts, the customer's written authorization. For various types of institutional accounts, it may be advisable for dealers to obtain certain additional data and documentation. Often this additional documentation may be necessary for the dealer's own protection (*e.g.*, trading authorizations). Similarly, for certain institutional accounts, dealers may wish to obtain yearly audited financial statements where assurance is desired that the account is and remains an institutional account for the purpose of rule G–19.

Because of the wide variety in the types of institutional accounts and the documentation that might be necessary to establish suitability or otherwise considered to be necessary and prudent by the dealer, the Board believes that dealers ultimately will have to employ a certain degree of judgment in determining what information and documentation should be obtained and recorded for specific institutional customers beyond that now required by rule G–8(a)(xi).

One commentator noted that, in many instances, a suitability determination should be made on the basis of the investment objectives articulated by an institution for a specific transaction or a specific component of a large investment portfolio. In these cases, the overall investment objectives of the institution or portfolio may not be the deciding factor in determining suitability. The Board notes that this view is consistent with the current language of rule G–19 and the proposed rule change, which requires that a dealer have reasonable grounds for recommending a transaction "based on the facts disclosed by such customer or otherwise known about such customer." Clearly, if specific portfolio or transaction objectives are given, the proposed rule change and current Board rules require that such information be used to make a suitability determination and be recorded pursuant to rule G–8(a)(xi)(F).

One commentator preferred the Commission's definition of "accredited investor" to the definition of "institutional account" in the proposed rule change. The Commission's accredited investor definition includes a wide range of investors, such as any private business development company or individuals making in excess of $200,000 per year for three years. The term "accredited investor" is used as part of an exemptive provision from certain registration requirements under the Securities Act of 1933. Having a customer classified as an "accredited investor," however, does not excuse dealers from obtaining specific customer account data when making recommendations in equity transactions. Moreover, because "institutional account"—rather than "accredited investor"—is used by the NASD to define a dealer's customer account requirements, the Board believes that the use of a different test for municipal securities transactions would complicate the internal recordkeeping requirements of most securities firms.

Transactions With Investment Advisors

Two commentators requested clarification of the suitability requirements that exist when a dealer executes a transaction for an investment advisor. The Board notes that this question is answered by determining who the dealer's customer is—the investment advisor or the investment advisor's client. The Board believes that, in general, the investment advisor will be the dealer's customer. However, it is not possible to state this as an ironclad rule. The requirement for establishing suitability may depend on whether the beneficial owner is looking to the dealer or exclusively to the investment advisor for recommendations on investments. The dealer, of course, should obtain the necessary customer account data from whomever is the customer. If the investment advisor is the customer, then the dealer would proceed as with other institutional accounts. However, if a dealer has a dealer-customer relationship with the beneficial owner and treats that entity as its own customer, then the dealer must obtain the information necessary to make a suitability determination prior to making a recommendation. In this case, the investment advisor is treated as an interested party to the transaction.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to the file number in the caption above and should be submitted on February 17, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200-30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1716 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33493; File No. SR–NYSE–93–46]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating To Increase in Continuing Listing Fees

January 19, 1994.

On December 8, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase continuing listing fees.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] A complete list of the NYSE's fees applicable to the listing process is contained in the NYSE Listed Company Manual.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33317 (December 10, 1993), 58 FR 66045 (December 17, 1993). No comments were received on the proposal.

Currently, the Exchange's listing fees include an original listing fee, an initial fee, and continuing annual listing fees.

The NYSE is instituting a rate increase with respect to continuing listing fees as follows:

SCHEDULE OF CONTINUING LISTING FEES

Continuing Fees for Domestic and Foreign Securities [1]

	Current	Proposed
Per share/ADR Fee: [2]		
0–2,000,000	$1,600	$1,650
Over 2,000,000	805	830
Minimum fees:		
1–10,000,000	15,700	16,170
10,000,001–20,000,000	23,550	24,260
20,000,001–50,000,000	31,400	32,340
50,000,001–100,000,000	47,000	48,410
100,000,001–200,000,000	62,700	64,580
Over 200,000,000	78,100	80,440
Maximum	500,000	[5]

Continuing Fees for Short-Term Securities [3]

Securities issued: [4]		
1–10,000,000	7,850	8,085
10,000,001–20,000,000	11,775	12,130
20,000,001–50,000,000	15,700	16,170
50,000,001–100,000,000	23,500	24,205
100,000,001–200,000,000	31,350	32,290
Over 200,000,000	39,050	40,220

[1] The Continuing Annual Fee is payable each year on each security listed on the Exchange. The applicable fee is the greater of the Per Share/ADR Fee or the minimum fee.

[2] Rate is per million shares or American Depositary Receipts ("ADRs").

[3] Short term Securities are defined by the Exchange as those securities having a term of less than five years (*e.g.*, index warrants, foreign currency warrants, contingent value rights).

[4] Based on securities issued, not on securities outstanding.

[5] No change.

The NYSE states that the purpose of the increase to continuing listing fees is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, automation, utilities and other costs associated with providing marketplace facilities and services.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[4] In particular, the Commission believes the proposal is consistent with the section 6(b)(4) requirements that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the Exchange's facilities.[5] The Commission believes that the increases in continuing listing fees are equitable because the increases should not result in an excessive allocation of NYSE fees on its issuers as opposed to members and other persons using its facilities. The Commission further finds that the fees are reasonable because the Exchange has proposed the increases to offset rising costs. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–93–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1679 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33497; File No. SR–OCC–93–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Definition of Index Group

January 21, 1994.

On July 26, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR–OCC–93–16) relating to the definition of "index group." The Commission published notice of this proposed rule change in the **Federal Register** on December 17, 1993.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies the definition of index group in OCC's By-Laws to accommodate the development of new types of stock indexes being introduced by the exchanges.[3]

Article XVII, Section 1 of OCC's By-Laws currently defines the term index group as "a group of securities whose inclusion and relative representation in group is determined by the inclusion and relative representation of their current market prices in a securities index specified by an Exchange." To ensure that the definition of index group encompasses all currently traded indexes as well as other types of indexes that may be developed by the exchanges in the future, the proposed rule change will omit from the current definition of index group any reference to market price as the method for determining the relative representation of a stock within an index. Instead, the term index group will be more broadly defined as "a group of securities whose inclusion and relative representation in the group is determined by their inclusion and relative representation in a securities index specified by an Exchange." This change is intended to clarify that an index need not be based on a strictly proportional representation of the market prices of the index's component stocks.

II. Discussion

The Commission believes that OCC's proposal is consistent with the Act and

[4] 15 U.S.C. 78f(b) (1988).

[5] 15 U.S.C. 78f(b)(4) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33315 (December 9, 1993), 58 FR 66046.

[3] For instance, the American Stock Exchange ("AMEX") recently introduced, with the Commission's approval, a new method of calculating stock indexes. This new methodology, called the equal dollar weighting methodology, is designed to ensure that each of the component securities in a stock index is represented in approximately equal dollar amounts. The equal dollar weighting calculation method uses both the market price and the capitalization value of the component stocks to determine the relative representation of stocks within an index.

AMEX originally proposed the equal dollar weighting methodology with the introduction of the Biotechnology Index (Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 [File No. SR–AMEX–92–1] (order approving proposal to list options on Biotechnology Index)). In addition, the Commission recently approved a proposal that expands the use of this methodology with the introduction of the Morgan Stanley Indexes [Securities Exchange Act Release No. 32875 (September 13, 1993), 58 FR 48906 [File No. SR–AMEX–93–8] (order approving a proposal relating to the trading of options on the Morgan Stanley Cyclical and Consumer Indexes and long-term options on Reduced Value Cyclical and Consumer Indexes].

in particular with Section 17A thereunder.[4] Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[5] By broadly defining the term index group and thereby clarifying that present and future exchange-listed indexes will be included thereunder, the proposal helps to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with Section 17A thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–93–16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–1717 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33492; File No. SR–OCC–90–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Revising Its Market-Maker Account Structure

January 19, 1994.

I. Introduction

On September 11, 1990, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–90–11) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 [1] to revise OCC's market-maker account structure. Notice of OCC's proposal was published in the **Federal Register** on December 12, 1990.[2] On July 10, 1991, and on March 13, 1992, OCC filed Amendment No. 1 and Amendment No. 2, respectively.[3] Both amendments were technical in nature and did not require republication of notice of filing. No written comments were received. As discussed below, the Commission is approving OCC's proposal.

II. Description

A. In General

The proposed rule change authorizes OCC to exclude from a clearing member's combined market-makers' account the exchange transactions and positions of market-makers, specialists, or registered traders that are directly or indirectly related to or associated with the carrying clearing member ("associated market-makers").[4] Positions excluded from the combined market-makers' account as a result of this proposal can be maintained by the clearing member either in a separate market-maker's account (that is specifically limited to the positions of the clearing member) or in a proprietary market-maker account under certain circumstances as described below.

B. Exclusion of Associated Market-Makers From the Combined Market-Makers' Account

Section 3(c) of Article VI of OCC's By-Laws permits a clearing member to maintain a combined market-makers' account. A combined market-makers' account is confined to the exchange transactions and positions of market-makers who have consented to the commingling of their positions with those of other market-makers. Currently, section 3(c) specifically prohibits the carrying clearing member from participating in its combined market-makers' account, and OCC's market-makers' account agreement prohibits non-customers of the carrying clearing member from participating in the carrying clearing member's combined market-makers' account.

"Non-customer" is defined in Article I, Section N(1) of OCC's By-Laws to include the clearing member, any general or special partner of the clearing member, any officer or director of the clearing member, or any participant, as such, in any joint, group, or syndicate account with the clearing member or with any partner, officer, or director of the clearing member. This definition was drafted to encompass, in addition to the clearing member itself, only those categories of persons who are specifically excluded from the definition of customer in the Commission's hypothecation rules.[5] Because OCC's definition of non-customer is so narrowly drafted, OCC's rules currently permit a market-maker that is closely related to its carrying clearing member to commingle its positions with the positions of market-makers that are unrelated to the carrying clearing member in the carrying clearing member's combined market makers' account.

In light of its experience during the 1989 market break, OCC believes that the commingling of positions of associated market-makers with those of unrelated market-makers significantly increases the risks to unrelated market-makers, OCC, and the options markets.[6] Such associated market-makers may be financially dependent upon the carrying clearing member or may be under common direction with respect to

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[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28676 (December 4, 1990), 55 FR 51365.

[3] Amendment No. 1 modified the filing by separately defining the term "related person" to simplify the definition of "associated market-maker." Amendment No. 1 also added to the proposal and defined the term "proprietary market professional."

Amendment No. 2 modified the filing by amending the Associated Market-Maker Consent agreement, which an associated market-maker uses to elect to have its account treated as a proprietary market-maker's account. The agreement was amended in connection with the Commission's no-action letter from Michael A. Macchiaroli, Assistant Director, Division, Commission, to James R. McDaniel, Schiff Hardin & Waite (Counsel to OCC) (March 27, 1992) in response to a letter from James R. McDaniel, Shiff Hardin & Waite (Counsel to OCC), to Michael A. Macchiaroli, Assistant Director, Division, Commission (May 21, 1990).

[4] The term associated market-maker is defined as a person maintaining an account with a clearing member as a market-maker, specialist, stock market-maker, stock specialist, or registered trader that is a "related person" of the clearing member and includes any participant in an account of which 10% or more is owned by an associated market-maker or an aggregate of 10% or more is owned by one or more associated market-makers. OCC By-Laws, Article I, Section 1.A(10).

A person is a related person of the clearing member if such person (1) is a business affiliate that controls, is controlled by, or is under common control with the clearing member or any officer, director, or general or special partner of the clearing member, (2) is a spouse or minor living in the same household as the related person or any non-customer of the clearing member, or (3) is an employee who manages the business or funds of the clearing member. The term related person does not include a non-customer of the clearing member. Direct or indirect control of 10% or more of the equity of any entity is deemed to confer control of that entity. OCC By-Laws, Article I, Section 1.R(3).

[5] Commission Rules 8c–1 and 15c2–1 [17 CFR 240.8c–1 and 240.15c2–1]. Hypothecation is the pledging of securities as collateral for loans made to purchase securities or to cover short sells. Generally, the Commission's hypothecation rules prohibit hypothecating or arranging for the hypothecation of securities carried for the account of a customer under circumstances that permit:

(1) the commingling without written consent of a customer's securities with the securities of any other customer;

(2) the commingling of a customer's securities with the securities of any person other than a bona fide customer; or

(3) the hypothecation of customers' securities for a sum in excess of the aggregate indebtedness of all such customers with respect to such securities.

[6] *See supra* note 17 and accompanying text.

trading strategies and risk management. In the event of the failure of the clearing member, the conditions which led to such failure may also lead to the insolvency of the associated market-maker. If the associated market-maker's positions are carried in a combined market-makers' account, OCC may be unable to separate the collateral supporting the positions in the combined market-makers' account from the collateral supporting the carrying clearing member's proprietary positions. As a result, OCC may have difficulty in transferring the unrelated market-makers' positions and supporting collateral even though those positions continue to be viable. OCC believes that prohibiting the commingling of the positions of associated market-makers with the positions of unrelated market-makers will facilitate OCC's ability to transfer expeditiously viable accounts of the unrelated market-makers to other clearing members in the event of a failure of the carrying clearing member. Consequently, OCC's and the unrelated market-makers' risk of loss should be decreased.

Accordingly, OCC is amending its By-Laws by adding definitions of "associated market-maker"[7] and "proprietary market-maker"[8] and by including language to prohibit associated market-makers and proprietary market-makers from participating in the combined market-makers' account.[9] An associated market-maker so excluded can maintain its positions in a separate market-maker's account.[10] Because each separate market-maker's account is restricted to the transactions of a single market-maker, the positions of an associated market-maker that are maintained in such an account will not be commingled with the positions of other market-makers or with the positions of the clearing firm.[11] Under OCC rules, a clearing member that maintains a separate market-maker's account for its proprietary market-maker positions ("proprietary market-maker account") may elect to have the positions in that account combined with the positions in its firm account for purposes of margin calculations[12] as a clearing member may elect to have its associated market-makers' positions treated as proprietary positions so that the associated market-makers' positions are combined with firm positions for purposes of margin calculation.

III. Discussion

Section 17A of the Act provides that a clearing agency must be organized and its rules designed to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible.[13] As discussed below, the Commission believes that OCC's proposal is consistent with these objectives.

OCC's proposal responds to the events surrounding the default of an OCC clearing member on October 13, 1989.[14] The defaulting clearing member carried in a combined market-makers' account the positions of an associated market-maker and the positions of approximately 160 unaffiliated market-makers. One person owned 100% of both the defaulting clearing member and the associated market-maker.

Because of the precipitous decline in the markets on Friday, October 13, 1987, OCC issued an intraday margin call to the defaulting clearing member whose settlement bank informed OCC that it would neither honor OCC's intraday margin call nor extend further credit to the defaulting clearing member. In an effort to cure the default, OCC directed the defaulting clearing member to transfer the positions in its accounts, particularly positions that were carried for unaffiliated market-makers and customers, to another OCC clearing member. Because the associated market-maker's positions were commingled with those of unaffiliated market-makers in a combined market-makers' account, OCC was unable to distinguish the collateral relating to the associated market-maker's positions from the collateral relating to the unaffiliated market-makers' positions in the account. Consequently, OCC was required to direct the defaulting clearing member to transfer all of the positions in its combined market-makers' account. Although this did not preclude the transfer, it did make the transfer of the non-proprietary positions more difficult.

The Commission believes that OCC's proposal will enhance OCC's clearing member monitoring and risk management capabilities in several respects. As an initial matter, the Commission notes that OCC's current market-maker account structure permits clearing members to mask proprietary activity by forming associated market-makers and combining the positions of such market-makers with those of unaffiliated market-makers in a combined market-makers' account. Although OCC can separate the positions of the associated market-makers from those of unaffiliated market-makers, the present account structure can complicate OCC's monitoring of clearing member positions. Currently, before OCC can assess the positions under a clearing member's control, OCC must separate associated market-makers' positions from unaffiliated market-makers' positions and then must combine the associated market-makers' positions with the clearing member's positions. By requiring the associated market-makers' positions to be maintained apart from the unaffiliated market-makers' positions, OCC's proposal should enhance its ability to monitor the positions of its clearing members.

The proposal also should enhance OCC's risk management capabilities by providing OCC with a more accurate representation of clearing members' financial condition. Generally, there are two levels of capital supporting the trading and positions of a clearing member's market-maker.[15] However, as the above-described clearing member default illustrates, this may not be the case when a clearing member carriers the account of an associated market-maker because the clearing member and the associated market-maker may be relying on the same sources of financing to support their trading activities. Thus, by requiring that associated market-maker hold their positions either in a separate account or is a proprietary

[7] OCC By-laws, Article I, Section 1.A(10).

[8] Under the proposal, Article I, Section 1.P(5) of OCC By-Laws defines proprietary market-maker as a market-maker, specialist, stock market-maker, stock specialist, or registered trader that is (A) a non-customer of the carrying clearing member or (B) a related person of the clearing member that (1) is not a customer of the clearing member for purposes of Commission Rule 15c3–3 [17 CFR 240.15c3–3], (2) does not carry the accounts of persons who are customers for purposes of Commission Rule 15c3–3, and (3) has consented to be treated as a proprietary market-maker. Thus, a proprietary market-maker account can be maintained by not only the clearing member itself but also by any non-customer of the clearing member. See also OCC's Amendment No. 2, discussed *supra* note 3.

[9] OCC By-laws, Article VI, Section 3(c). A parallel change is made to Article VI, Section 3(e) with respect to combined registered traders' accounts.

[10] OCC By-Laws, Article VI, Section 3(b). In the case of a registered trader, positions can be maintained in a separate registered trader's account established under paragraph (e).

[11] It is generally advantageous to a clearing member to maintain positions in a combined market-makers' account rather than in a separate market-maker's account. Market-makers' positions in the combined market makers' account can be used as offsets or hedges against each other which may result in a lower margin requirement for the clearing member.

[12] OCC Rules 601(c)(3) and 602(c)(4).

[13] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[14] For a detailed discussion of the events surrounding the clearing member default, refer to Market Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (December 1990), 158–60 and 164–66.

[15] *I.e.*, the capital of the clearing member and the capital of the market-makers.

market-maker's account, OCC's proposal should provide OCC with a more accurate picture of its sources of exposure and the financial ability of a particular firm to cover such exposure in the event of a clearing member default.

The proposal also should enhance OCC's ability to administer a clearing member's account in the event of the clearing member's default. If the financial or operational condition of a clearing member makes it necessary or advisable for the protection of OCC or other clearing members, OCC has the authority to direct a clearing member to transfer some or all of its accounts to another clearing member.[16] However, if associated market-maker's positions are held with the positions of unaffiliated market-makers in a combined market-makers' account, as in the situation described above, OCC may experience difficulty in separating the collateral supporting the associated market-maker's positions from the collateral supporting the positions of the unaffiliated market-makers' positions thereby making the transfer of unaffiliated market-makers' positions difficult if not impossible.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change (File No. SR–OCC–90–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

[FR Doc. 94–1676 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33491; File No. SR–OCC–93–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to Cash-Settled Foreign Currency Options

January 19, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 26, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. On December 22, 1993, OCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's By-Laws and Rules to allow OCC to issue, clear, and settle cash-settled foreign currency options such as have been proposed for trading by the Philadelphia Stock Exchange, Inc ("PHLX").[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's By-Laws and Rules to accommodate cash-settled foreign currency options such as have been proposed for trading by the PHLX. In general, these amended By-Laws and Rules will apply the same procedures OCC currently uses to clear and settle transactions in existing options to the clearance and settlement of cash-settled foreign currency options. However, unlike OCC's procedures with respect to other foreign currency options, cash-settled foreign currency options will be settled by requiring clearing members to pay to or receive from OCC the amount of U.S. Dollars that reflects the difference between the spot price[4] and the exercise price of the underlying foreign currency.[5] Cash-settled foreign currency options that are in-the-money by any amount on the expiration date will be automatically exercised. Options not automatically exercised will expire unexercised. Clearing members will not be permitted to submit exercise instructions with respect to cash-settled foreign currency options.

Pursuant to the proposal, the definitions of "clearing member" and "option contract" in Article I of OCC's Bylaws are amended to add references to cash-settled foreign currency options. The definition of "exercising clearing member" is amended to make clear that when used with respect to an option that is subject to an automatic exercise, including cash-settled foreign currency options, the term refers to the clearing member in whose account an option so exercised is carried.

Article XXII is added to OCC's By-Laws to establish By-Laws specifically applicable to cash-settled foreign currency options.[6] Under Section 1 of Article XXII, the spot price of the underlying foreign currency will be determined by the exchange, or an entity designated by the exchange, on which such options are traded.[7] Article XXII, Section 2 clarifies that holders of cash-settled foreign currency options have the right to receive from OCC, and writers of cash-settled foreign currency options have the obligation to pay to OCC, the amount of United States dollars that reflects the difference between the spot price and the exercise price of the foreign currency underlying

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[16] OCC Rule 305.

[17] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The amendment was necessary to: (1) correct language in OCC's Rule 2302 to clarify that cash-settled foreign currency options that are in-the-money by any amount will be subject to OCC's automatic exercise procedures; (2) conform the definition of "expiration date" in Article XXII, Section 1, E(3) of OCC's By-Laws with amendments filed by the Philadelphia Stock Exchange, Inc. in File No. SR–PHLX–93–10; and (3) make certain typographical corrections to the original filing.

[3] For a discussion of the PHLX proposal, refer to Securities Exchange Act Release No. 32685 (July 7, 1993), 58 FR 41529 [File No. SR–PHLX–93–10] (notice of filing of proposed rule change).

[4] The term "spot price" with respect to an option contract on a foreign currency means the price, in terms of U.S. dollars, quoted by various commercial banks in the interbank foreign exchange market for the sale of a single unit of such foreign currency for immediate delivery, which generally means delivery within two business days following the date on which the terms of such a sale are agreed upon.

[5] Currently, all OCC-cleared index options are cash-settled. The procedures proposed for exercise settlement of cash-settled foreign currency options are similar to the procedures for exercise settlement of index options. Pursuant to OCC Rule 1806, index options settle by OCC either paying to or collecting from the exercising or assigned clearing member the difference in U.S. dollars between the exercise price of the index option and the exercise settlement value (*i.e.*, the value of the index as reported by the reporting authority designated by the options market where the option is traded).

[6] Generally, the By-Laws in Articles I through XI also are applicable to cash-settled foreign currency options. In some cases, the By-Laws in Article XXII replace or supplement the By-Laws contained in Articles I through XI with respect to cash-settled foreign currency options.

[7] For a full description of how the spot price for cash-settled foreign currency options will be determined, refer to the PHLX proposal, *supra* note 3.

such options. Section 3 of Article XXII makes provisions for adjustments in the terms (*i.e.*, exercise price, unit of trading, *etc.*) of outstanding cash-settled foreign currency options under unusual circumstances,[8] and Section 4 of Article XXII makes provisions for circumstances in which the spot price is either unavailable or clearly inaccurate.[9] Section 3 is similar to corresponding provisions relating to other foreign currency options, and Section 4 is similar to provisions relating to cash-settled index options.

Chapter XXIII of OCC's Rules is added to establish Rules specifically applicable to cash-settled foreign currency options.[10] OCC Rule 2301 prohibits clearing members from depositing the underlying foreign currency or Treasury bills as cover in lieu of margin with respect to cash-settled foreign currency options.[11] Rule 2302 describes the automatic exercise procedure for cash-settled foreign currency options.[12]

Rule 2303 describes the assignment of automatic exercises of cash-settled foreign currency options. Because all cash-settled foreign currency options in a series that is in the money will be automatically exercised, an assignment will be made to each short position in the series. Accordingly, Rule 2303 contains no reference to OCC's Rule 803, which describes the random assignment of exercise notices.[13] Paragraph (b) of Rule 2303 states that OCC shall make available to each clearing member with cash-settled foreign currency options an Exercise and Assignment Activity Report on the business day following the expiration date. This report will reflect the clearing member's exercises of cash-settled foreign currency options and its assignments of obligations relating to exercises of cash-settled foreign currency options.

Rule 2304 states that the settlement date for exercised cash-settled foreign currency options will be the day immediately following the expiration date. Rule 2305 states that settlement of cash-settled foreign currency options will occur by the payment of the exercise settlement amounts from assigned clearing members to OCC and by the payment of the exercise settlement amounts from OCC to exercising clearing members. Under Rule 2305, OCC may net exercise settlement amounts to be paid by a clearing member against exercise settlement amounts to be paid to the clearing member to obtain a single net settlement amount for cash-settled foreign currency option exercises with respect to each account.[14] This is consistent with OCC practices respecting other foreign currency options. All exercise settlement amounts will be paid within OCC's usual timeframes.

Rule 2306 makes it clear that exercised cash-settled foreign currency options to which a suspended clearing member is a party, whether the clearing member is an exercising clearing member or an assigned clearing member, generally will be settled in accordance with the provisions of Rule 2305.[15]

OCC states that the proposed changes to its By-Laws and Rules are consistent with the purposes and requirements of section 17A of the Act, as amended, because they provide for the prompt and accurate clearance and settlement of transactions in cash-settled foreign currency options. The proposed changes also are consistent with OCC's section 17A obligations to safeguard funds and securities in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations promulgated thereunder applicable to registered clearing agencies. In particular, sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities within its custody or control or for which it is responsible.[16] Because OCC will apply rules and procedures comparable to those that it has used successfully in the clearance and settlement of transactions in other established options products, OCC will satisfy its statutory obligations concerning safeguarding. At the same time, OCC will provide clearance and settlement facilities for an innovative product to the foreign currency market. Cash-settled foreign currency options should provide investors with an additional means to hedge foreign currency portfolios against short-term market risk, should facilitate transactions in foreign currency options, and should contribute to the

[8] Section 3 provides that if the country of origin of an underlying foreign currency should (i) issue a new currency intended to replace its then existing currency as the standard unit of the official medium of exchange of such country or (ii) officially alter the exchange rate or exchange characteristics of its currency with respect to other currencies, an adjustment panel, consisting of the Chairman of OCC and two designated representatives of each exchange on which the affected cash-settled foreign currency options are traded, shall determine whether to make adjustments to the exercise price, unit of trading, number of contracts, underlying foreign currency, or other terms of option contracts affected by such event. The adjustment panel will consider such factors as fairness to holders and writers of affected option contracts, the maintenance of fair and orderly markets for such option contracts, consistency of interpretation and practice, and efficiency of exercise settlement procedures.

[9] Section 4 authorizes OCC to suspend settlement obligations of exercising and assigned clearing members and/or to fix the exercise settlement amount for exercised contracts of an affected series in accordance with the best information available.

[10] Generally, the Rules in Chapters I through XII also are applicable to cash-settled foreign currency options. In some cases, the Rules in Chapter XXIII replace or supplement the Rules in Chapters I through XII with respect to cash-settled foreign currency options.

[11] Rule 2301 replaces Rules 610 and 612 for cash-settled foreign currency options.

[12] Rule 2302 sets forth the expiration date exercise procedures for cash-settled foreign currency option contracts. Under Rule 2302, a cash-settled foreign currency clearing member shall be automatically deemed to have properly and irrevocably tendered to OCC immediately prior to the expiration time on the expiration date an exercise notice with respect to each cash-settled foreign currency option contract listed in the report made available to the clearing member pursuant to Rule 806(a), the Exercise and Assignment Activity Report, that has an exercise price below the spot price in the case of a call or above the spot price in the case of a put. Rule 2302 replaces Rules 802 and 805 and supplements Rule 806 for cash-settled foreign currency options.

[13] The random assignment procedure described in Rule 803 is built into OCC's exercise and assignment system. Because OCC will use its exercise and assignment system to administer and generate reports for assignments of cash-settled foreign currency options, OCC, as an operational matter, will actually use the random assignment procedure for assignments of automatic exercises of cash-settled foreign currency options. However, the use of the procedure will have no effect on writers or assigned clearing members because all short positions will be assigned.

[14] Rule 2305 replaces Chapter IX of the Rules and supplements Rules 502 and 607 for cash-settled foreign currency options.

[15] Rule 2306 supplements Rule 1104 and replaces Rule 1107 for cash-settled foreign currency options.

[16] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1986).

maintenance of fair and orderly markets. OCC's clearance and settlement of such options should promote their prompt and efficient clearance and settlement.

OCC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The Commission finds good cause for so approving because accelerated approval will permit OCC to coordinate its clearance and settlement of cash-settled foreign currency options with the PHLX's listing of cash-settled foreign currency options, which are proposed for February 7, 1994. The Commission believes that because OCC will be applying procedures which have proved to be efficient and safe in the past, accelerated approval is justified. Furthermore, no negative comments were received when the Commission published notice of filing of the PHLX proposed rule change.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–93–10 and should be submitted by February 17, 1994.

V. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[18]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–OCC–93–10) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1678 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33487; File No. SR–PTC–93–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Participants Trust Company Relating to the Declaration of a Dividend Payable on January 20, 1994, to Stockholders of Record as of December 31, 1993

January 18, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 27, 1993, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PTC is declaring a dividend payable on January 20, 1994, to stockholders of record as of December 31, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to report the declaration of a dividend payable on January 20, 1994, to PTC's stockholders of record as of December 31, 1993.

By letter dated March 27, 1989, from the Board of Governors of the Federal Reserve System ("Board of Governors"), PTC was prohibited from paying dividends to its stockholders. By letter dated June 9, 1992, from the Board of Governors, PTC was relieved of the restriction on the payment of dividends on the understanding that dividends, if declared, would be declared periodically by PTC's Board of Directors and paid at a rate not to exceed the 90-day United States Treasury bill rate in effect at the time the dividend is declared. By order dated January 15, 1993,[2] the Commission approved PTC's practice of paying such dividends out of net profits subject to the limitations imposed by the Board of Governors and subject to the further requirements that (i) prior to using excess income from invested principal and interest ("P&I") to pay a dividend, PTC's Board of Directors be advised of any amount related to the investment of P&I which has not been rebated and is part of the net profits used to declare the dividend, and affirmatively approve the application of such excess P&I income for the dividend, and (ii) PTC file a proposed rule change pursuant to Section 19(b)(3)(A) of the Act each time it declares a dividend. PTC paid its first dividend on January 18, 1993, in the amount of $.52 per share, to stockholders of record as of the close of business on December 31, 1992.

At its meeting of December 21, 1993, PTC's Board of Directors declared a dividend in the amount of $.525 per share, payable on January 20, 1994, to stockholders of record as of the close of business on December 31, 1993. This dividend rate does not exceed the 90-day United States Treasury bill rate in effect on December 21, 1993 (3.11%, as published in The Wall Street Journal on December 21, 1993). The dividend does not include any excess income attributable to investments of P&I as all such P&I related income with respect to fiscal year ended December 31, 1993 will be rebated to participants, pro rata, based on the amount of P&I disbursements to each participant.

The issuance of a dividend under these circumstances advances the

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[17] *Supra* note 3.

[18] 15 U.S.C. 78q–1 (1988).

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31746 (January 27, 1993), 58 FR 6319.

requirements of fair representation of shareholders and participants under Section 17A(b)(3)(C) of the Act in that it provides an incentive for participants to invest in PTC shares, and is also consistent with Section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from Participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it constitutes a stated practice with respect to the administration of an existing rule of PTC. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested parties are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–93–07 and should be submitted by February 17, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1675 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20027; 812–8456]

Daily Money Fund, et al. Notice of Application

January 19, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund, Daily Tax-Exempt Money Fund, Fidelity Special Situations Fund, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Beacon Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Corporate Recovery Fund, Fidelity Corporate Trust, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Trust, Fidelity Institutional Investors Trust, Fidelity Investment Trust, Fidelity Limited Term Municipals, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Sterling Performance Portfolio, L.P., Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Spartan U.S. Treasury Money Market Fund, Tax-Exempt Portfolios, Variable Insurance Products Fund, Variable Insurance Products Fund II, and Zero Coupon Bond Fund (collectively, the "Trusts"); Fidelity Management & Research Co. ("FMR"); Fidelity Distributors Corporation ("FDC"); and National Financial Services Corporation ("NFSC").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder, and under section 6(c) to amend a previous order granting an exemption from sections 18(f)(1), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to (a) assess and, under certain circumstances, waive a contingent deferred sales load ("CDSC") on certain redemptions of shares and (b) amend a prior order by adding a conversion feature to an existing multiple class distribution arrangement.

FILING DATE: The application was filed on June 17, 1993, and amended on September 14, 1993 and December 17, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 14, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030

(Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Most of the Trusts are series companies that may issue one or more series. Applicants request that relief be extended to (a) each Trust and each of its series and (b) all other investment companies or series thereof that are, or in the future will be, (i) advised by FMR (or a person controlling, controlled by, or under common control with FMR) or are, or in the future will be, distributed by FDC or NFSC (or a person controlling, controlled by, or under common control with FDC or NFSC) and that (ii) have or will have the ability to issue classes of shares that are identical in all material respects to those described in the application (collectively with the Trusts and series thereof, the "Funds").

2. FMR acts as each Fund's investment manager and also provides the Funds with administrative services. FDC acts as the distributor of all the Funds, other than the Funds for which NFSC services as distributor. NFSC currently acts as the distributor to three Funds, each a series of the Daily Money Fund. FMR, FDC, and NFSC are all subsidiaries of FMC Corp.

3. Applicants previously requested an order under section 6(c) of the Act to permit the issuance and sale of an unlimited number of classes of securities by the Funds (the "Existing Order").[1] The Existing Order contained the following permissible class differences: (a) The impact of certain Class Expenses, as Class Expenses are defined in the Existing Order; (b) the fact that classes will vote separately with respect to the classes' Rule 12b–1 Plan and/or Shareholder Services Plan, as both plans are defined in the Existing Order; (c) exchange privileges of the classes of shares; and (d) the designation of each class of shares.

4. The Funds' existing classes of shares are sold subject to a front-end sales load and/or a rule 12b–1 fee. Applicants now request the ability to offer sheres that carry a standard or level load CDSC. The standard CDSC shares will not be subject to a front-end sales load but will be subject to a CDSC and an annual rule 12b–1 and/or service fee. The level load shares will have the same features as the standard CDSC shares except that the rule 12b–1 and/or service fee could be different. Applicants also request the ability to have a conversion feature in connections with the shares that carry a standard or level load CDSC. With this feature, these shares may, after a period of time, automatically convert to shares of another class without the imposition of any additional sales charges and will be subject to the lower rule 12b–1 fee and/or service fee applicable to that class. Applicants also request the ability to impose a CDSC on the proceeds of certain redemptions of shares ordinarily subject to a front-end sales charge initially sold without a sales charge.

5. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption. As a result, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the shares when purchased. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of the dividends and capital gain distributions, second of shares held by the shareholder for a period equal to or greater than the CDSC period, and finally of other shares held by the shareholder for the longest period of time.

6. In accordance with rule 11a–3 under the Act, no CDSC will be imposed on any exchange by an investor of shares with a CDSC for shares of another Fund. The sum of any front-end sales charge, asset based sales and CDSC paid by any individual shareholder on a single investment will not exceed the maximum sales charge provided in article III, section 26 of the National Association of Securities Dealers ("NASD") Rules of Fair Practice.

7. The Funds request the ability to waive or reduce the CDSC in connection with the following redemptions of shares: (a) Following death or disability, as defined in section 72(m)(7) of the Internal Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year after death or disability of a shareholder, as relevant; (b) of retirement plan distributions which are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets; (c) by current or former trustees or officers of a Fund, or current or retired officers, directors or Fidelity trustees or employees, and by the spouse of such persons, or by a Fidelity trustee or employee acting as custodian for a minor child, or a person acting as trustee of a trust for the sole benefit of the minor child of a Fidelity trustee or employee; (d) by registered representatives, bank trust officers, and employees (and their immediate families) of investment professionals that have entered into distribution-related agreements with FDC or NFSC, (e) of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) by large accountholders holding specified minimums of a Funds' shares; (g) those affected by advisory accounts managed by FMR or any affiliated company, or by FMR or any such affiliated company itself; (h) those effected tax-exempt employee benefit plans as a result of the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper; (i) those effected pursuant to each Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the effective minimum account size; (j) by trust institutions investing on behalf of their clients; (k) by a charitable organization (as defined in section 501(c)(3) of the Code); (l) by a charitable remainder trust or life income pool established for the benefit of a charitable organization (as defined in section 501(c)(3) of the Code); (m) by any state, county, or city, or any governmental instrumentality, department, authority, or agency; (n) of shares purchased with redemption proceeds from other mutual fund complexes on which the investor has paid a front-end sales charge only;[2] (o) of shares purchased by an insurance company separate account used to fund annuity contracts purchased by employee benefit plans; (p) by investors participating in the Fidelity trust portfolios program; (q) of shares purchased through Portfolio Advisory

[1] Investment Company Act Release Nos. 18874 (July 30, 1992) (notice) and 18907 (August 25, 1992) (order).

[2] The Funds will take such steps as may be necessary to determine that a shareholder has not paid a CDSC or redemption fee in connection with the redemption of shares of an unrelated open-end investment company, including, without limitation, requiring a shareholder to provide a written representation that neither a CDSC nor redemption fee was imposed upon the redemption and, in addition, either (a) requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation, or (b) reviewing a copy of the current prospectus of the unrelated open-end investment company and determining that such company does not impose a CDSC or redemption fee.

Services;[3] (r) of new or subsequent shares purchased in a Uniform Gifts to Minors/Uniform Transfers to Minors account; (s) redemptions of shares purchased by contributions and exchanges to prototype or prototype-like retirement plans sponsored by FMR Corp. or FMR and that are marketed and distributed directly to plan sponsors (the Fidelity IRA, the Fidelity Rollover IRA, the Fidelity SEP–IRA and SARSEP, the Fidelity Retirement Plan, the Fidelity Defined Benefit Plan, the Fidelity Group IRA, the Fidelity 403(b) Program, the Fidelity Investments 401(a) Prototype Plan for Tax-Exempt Employers, and the CORPORATEplan for Retirement);[4] (t) in accounts to which banks or broker-dealers which have agreements with FDC or NFSC charge an investment management fee; (u) of shares purchased as part of an employee benefit plan maintained by an employer whose employee benefit plan is either subject to the requirements of the Employee Retirement Income Security Act of 1974 or would be except for specific statutory exemptions ("U.S. Employer"); (v) of shares purchased as part of an employee benefit plan maintained by a US. Employer that is a member of a parent-subsidiary group of corporations (within the meaning of section 1563(a)(1) of the Code); (w) of shares purchased in a Fidelity IRA account purchased with the proceeds of a distribution from an employee benefit plan, provided that at the time of the distribution, the employer or its affiliate had an account of a specified size maintained with Fidelity; and (x) of shares purchased by a registered investment adviser purchasing for its discretionary accounts, provided it has executed a Fidelity registered investment adviser agreement.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to assess a CDSC on certain redemptions of the shares as described above and to permit the Funds to waive the CDSC with respect to certain types of redemptions. Applicants believe that the contingent nature of the proposed charge places the purchaser in a better position than if a sales load were imposed at the time of sale, since in the case of the CDSC the shareholder enjoys the possibility that he or she will have to pay only a reduced sales charge, or no sales charge at all. Applicants further believe that the imposition of the CDSC permits the Funds' shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares of the Funds than if a sales load were imposed at the time of purchase.

2. Applicants also request an amendment to the Existing Order, which granted an exemption under section 6(c) from sections 18(f)(1), 18(g), 18(i), to permit applicants to issue multiple classes of shares representing interests in the same portfolio of securities. The amendment to the Existing Order would permit applicants to add a conversion feature as a difference between classes of shares. Applicants believe that the conversion feature is equitable and will not discriminate against any group of shareholders.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief will be subject to the following conditions:[5]

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to one or more of the following: (a) The impact of certain Class Expenses, which are limited to any or all of the following (i) transfer agent fee identified by applicants as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating to one class of shares; and (vii) accounting expenses relating solely to one class of shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or Rule 12b–1 Plan with respect to such class; (c) the fact that classes will vote separately with respect to the Fund's Shareholder Services Plan and/or Rule 12b–1 Plan, except as provided in conditions 16 and 17; (d) the different exchange privileges of the classes of shares; (e) the designation of each class of shares of a Fund; and (f) the fact that certain classes will have a conversion feature. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission pursuant to an amended order.

2. The trustees of the Funds, including a majority of the independent trustees, will approve the offering of different classes of shares (the "Multi-Class System") prior to the implementation of that system by a particular Fund. The minutes of the meetings of the trustees of the Funds regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Trusts including a majority of the trustees who are not interested persons of the Trusts. Any person authorized to direct the allocation and disposition of monies paid or payable by the Funds to meet Class Expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trusts, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's distributor and adviser will be responsible for reporting any potential or existing conflicts to the trustees. If a material conflict arises that the trustees determine cannot be eliminated, the Fund's distributor and adviser, at their own cost, will remedy such conflict up

[3] Portfolio Advisory Services is a division of Strategic Advisors, Inc., a registered investment adviser.

[4] A prototype retirement plan is a qualified pension or profit-sharing plan that can be separately adopted by an unlimited number of employers, the form of which plan has been reviewed and approved by the Internal Revenue Service. A prototype-like plan is a tax-deferred retirement savings vehicle, other than a qualified pension or profit-sharing plan for which the Internal Revenue Service does not maintain the same type of review procedures as it does for qualified pension or profit-sharing plans.

[5] All capitalized terms have the same meaning as in the Existing Order.

to and including establishing a new registered management investment company.

5. The distributor of each Fund will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

6. The Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need to enjoy the voting rights specified in rule 12b–1.

7. The trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and Rule 12b–1 Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Service Payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA. The ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applications have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Funds.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trusts with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the trustees.

13. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset value or public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that any Fund may make pursuant to its Rule 12b–1 Plan or Shareholder Services Plan in reliance on the exemptive order.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

16. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a Fund implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the

Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4 above, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by FMR, and FDC or NFSC. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1718 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20025; No. 812–8650]

Equitable Variable Life Insurance Co., et al.; Application for Order

January 19, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Equitable Variable Life Insurance Company ("Equitable Variable"), Separate Account I ("SA–1") and Separate Account FP ("SA–FP") of Equitable (together, "Separate Accounts"), and The Hudson River Trust ("Hudson Trust").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 17(b) from section 17(a) of the 1940 Act and approval requested under section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order of the Commission to permit the substitution of shares ("Substitution") of the Hudson Trust's Intermediate Government Securities Portfolio ("Government Securities Portfolio") for shares of the Hudson Trust's Short-Term World Income Portfolio ("World Income Portfolio") (together, "Affected Portfolios").

FILING DATE: The application was filed on October 14 1993, and a First Amended and Restated Application was filed on January 7, 1994.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on February 14, 1994. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Equitable Variable Life Insurance Co., 787 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Equitable Variable is a wholly-owned subsidiary of the Equitable Life Assurance Society of the United States ("Equitable Life"). Both companies are licensed to conduct business in all fifty states, Puerto Rico, the Virgin Islands and the District of Columbia.

2. SA–1 and SA–FP are registered unit investment trusts under the 1940 Act. SA–1 funds Equitable's scheduled premium variable life insurance contracts and SA–FP funds Equitable's flexible premium variable life insurance contracts ("Equitable Variable Contracts"). The Equitable Variable Contracts are registered under the Securities Act of 1933 ("1933 Act"). SA–1 has seven investment divisions ("SA–1 Divisions") and SA–FP has ten divisions ("SA–FP Divisions"). Each Division invests in shares of a corresponding portfolio of the Hudson Trust. Therefore, SA–1 and SA–FP each have a Short-Term World Income Division ("World Income Division"), that invests exclusively in shares of the World Income Portfolio, and an Intermediate Government Securities Division ("Government Securities Division"), that invests exclusively in shares of the Government Securities Portfolio.

3. The Hudson Trust is an open-end management investment company of the series type as described in Rule 18f–2 under the 1940 Act and has filed a registration statement under the 1933 Act and the 1940 Act, which became effective March 26, 1985. The Hudson Trust has twelve different portfolios ("Hudson Trust Portfolios") that are used by the corresponding SA–1 and SA–FP Divisions as investment vehicles in connection with the Contracts. The Hudson Trust Portfolios are managed by Alliance Capital Management L.P. ("Alliance"), a subsidiary of ACMC, Inc., a wholly owned subsidiary of Equitable.

4. All shares of the World Income Portfolio currently are owned by the Separate Accounts. Of these shares, approximately 50% were acquired by Equitable Variable's general account in exchange for "seed money" contributed upon commencement of the World Income Portfolio's operations on April 1, 1991. All other shares of this Portfolio are attributable to Equitable Variable Contracts and are, thus, owned by the Separate Accounts.

5. The fundamental investment objective of each of the World Income Portfolio and the Government Securities Portfolio is high current income consistent with relative stability of principal through investment primarily in fixed income securities. The World Income Portfolio invests in high quality short-term fixed income instruments denominated in a variety of currencies, with at least 20% of its invested assets in U.S. dollar-denominated instruments. The Government Securities Portfolio invests primarily in U.S. Government debt securities with secondary investments in repurchase agreements and forward commitments related to U.S. Government Securities.

6. Total net assets as of June 30, 1993 were $289.3 million for the Government

Securities Portfolio and $10.4 million for the World Income Portfolio. There were 2,442 Contractowners participating in the World Income Divisions of the Separate Accounts.

7. The Hudson Trust pays Alliance an investment advisory fee at the following annual percentages of the value of each Affected Portfolio's daily net assets:

Portfolio	First $350 mil—percent	Next $400 mil—percent	Over $750 mil—percent
Government Securities	.50	.475	.45
World Income	.60	.575	.55

The Hudson Trust pays various fees and expenses, and Alliance pays any other expense not specifically assumed by the Hudson Trust. For the fiscal year ended December 31, 1992, and the six months ended June 30, 1993, the Affected Portfolios' expenses were as follows:

Type of expense	Percent of average net assets	
	World income	Gov't securities
Fiscal Year 1992:		
Investment Advisory Fee	0.60	0.50
Other Expenses	0.16	0.02
Total Expenses	0.76	0.52
Six Months Ended June 30, 1993:[1]		
Investment Advisory Fee	0.60	0.50
Other Expenses	0.28	0.02
Total Expenses	0.88	0.52

[1] Annualized

Contractual provisions limiting fees and expenses to be paid under certain Equitable Variable Contracts existed when Equitable Variable reorganized its separate accounts into unit investment trust form. Consequently, Equitable Variable agreed to reimburse certain Divisions which invest in the Hudson Trust for the portion of advisory fees and other Trust expenses that exceed the contractual limits set forth in these Contracts. These reimbursements are made by Equitable Variable to such Divisions only in respect of owners of Equitable Variable Contracts that contain such contractual expense limits. Expenses of owners of Equitable Variable Contracts that do not contain any such contractual limits are not affected by the reimbursements. Because the reimbursements are prescribed by the relevant Contracts, Equitable Variable's contractual reimbursement obligations will not be altered by the proposed Substitution. The expenses of the Portfolios shown in the foregoing table are, therefore, not affected by these reimbursements.[1]

8. The yields for the 30-day period ending August 21, 1993 were 4.79% for the World Income Portfolio and 5.80% for the Government Securities Portfolio. The total returns for the Affected Portfolios were:

Period	World income (percent)	Gov't securities (percent)
Six-Month Period Ended 6/30/93 (unannualized)	3.55	6.89
One-Year Period Ended 12/31/92 (unannualized)	−2.91	5.53
Inception thru 12/31/92	0.11	10.06

9. The Hudson Trust's Board of Trustees and Equitable have determined that it is in the best interests of the shareholders of the World Income Portfolio, and the Contractowners who have allocated premiums to the World Income Divisions, to suspend operations of that Portfolio and the corresponding Divisions for the following reasons. The World Income Portfolio's expenses, as noted above, are relatively high. Assets are small and declining from approximately $11.3 million on June 30, 1992 to approximately $10.4 million on June 30, 1993, even though Equitable Variable has maintained its seed money investment of $5 million ($5.1 million as of June 30, 1993). Additionally, the World Income Portfolio currently is in net redemption and, consequently, making its investment objective more difficult to achieve. This Portfolio's performance relative to portfolios with similar investment objectives and investments has been below the median, with a recent ranking of eighth of eight world income funds for the one year period ended June 30, 1993. The proposed Substitution will, therefore, eliminate a Hudson Trust Portfolio that, because of its small size, is expected to be unable to reduce its operating expenses in the foreseeable future, that has not historically been able to produce competitive yields and returns, and that, because of those expenses and net redemptions, is expected to find it increasingly difficult to achieve competitive investment results.

10. Equitable Variable thus proposes to substitute shares of the Government Securities Portfolio for shares of the World Income Portfolio. The Separate Accounts will redeem, partly for cash and partly for securities as a redemption in-kind, all shares of the World Income Portfolio attributable to Contractowners at the close of business on the date selected for the Substitution. Redemptions in-kind of securities held by the World Income Portfolio will be executed to the extent that the securities have characteristics consistent with the investment objectives and diversification requirements of the Government Securities Portfolio. Equitable Variable will request Alliance to review such securities selected for redemption in-kind to assure that such securities are suitable investments for the Government Securities Portfolio. Applicants have determined that effecting redemption of shares of the World Income Portfolio and the purchase of shares of the Government Securities Portfolio partially in cash and partially for securities is appropriate, based on the overlap between the U.S. dollar-denominated portfolio securities of the World Income Portfolio and the shorter-term securities eligible for purchase by the Government Securities Portfolio. Securities redeemed in-kind will be valued in accordance with generally accepted accounting practices and all applicable laws and regulations.

The Separate Accounts will use the securities redeemed in-kind and the cash proceeds received on redemption of the World Income Portfolio's shares to purchase shares of the Government Securities Portfolio. The World Income Portfolio will process the redemption request, and the Government Securities Portfolio will process the purchase order, at prices based on the current net asset values next computed after receipt of the request and order and, therefore, in a manner consistent with Rule 22c–1 under the 1940 Act. Investments of Contractowners in the Separate Accounts will at all times be fully invested, the value of such investments will not be changed by the Substitution, and the investment by the Government Securities Divisions of the Separate Accounts will not be diluted. On the business day following the Substitution, or as soon thereafter as is consistent with the stated purposes of the proposed transaction, Equitable Variable will redeem entirely for cash shares of the World Income Portfolio constituting its seed money.

11. Contractowners will bear none of the transaction costs triggered by the redemption in connection with the Substitution. The full net asset value of the redeemed shares held by the Separate Accounts will be reflected in the Contractowners' unit values following the Substitution. Any costs of liquidating the assets of the World

[1] The application will be amended during the notice period to reflect this representation.

Income Portfolio for the redemption that is part of the Substitution will be reflected in the next asset value at which Equitable Variable subsequently redeems its shares of that Portfolio. All other expenses of the Substitution will be borne by Equitable Variable and Alliance. Accordingly, the costs associated with the Substitution will not be borne, directly or indirectly, by the Contractowner.

12. Contractowners will be given prior notice of the proposed Substitution and will have the option of transferring the portion of the value of their contract ("Policy Value") allocable to the World Income Portfolio to any other Portfolio of the Hudson Trust, without charge. Otherwise, amounts allocated to the World Income Portfolio will be transferred to the Government Securities Portfolio, also without charge. All contractowners have received a prospectus describing the policies of the Hudson Trust and its Portfolios and have all information needed to make a decision with respect to reallocating the respective portion of their Policy Value.

Within five (5) days after the Substitution, Equitable Variable also will send to Contractowners indirectly investing in the World Income Portfolio written notice of the Substitution indicating that shares of the World Income Portfolio have been eliminated and shares of the Government Securities Portfolio have been substituted. Equitable Variable will include in such mailing a supplement to the prospectus of the Hudson Trust that discloses the completion of the Substitution or an updated prospectus, as appropriate. Contractowners will be advised in the Second Notice that they may transfer the Policy Value allocable to the Government Securities Portfolio, as substituted, to any other available Divisions investing in the other Hudson Trust Portfolios, without limitation, without charge and at any time. The Substitution will not be counted as a transfer under any contractual provisions of the Equitable Variable Contracts that limit allowable transfers. Following the Substitution, Contractowners will be afforded the same contract rights that they currently have, including surrender and other transfer rights with regard to amounts invested under the Equitable Variable Contracts.

Applicants' Legal Analysis—Section 26(b)

1. The Applicants request that the Commission issue an order under sections 17(b) and 26(b) of the 1940 Act to the extent necessary to permit the substitution of shares of the Government Securities Portfolio for shares of the World Income Portfolio.

Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer:

> * * * to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

3. Equitable believes the Substitution is consistent with the interests of the owners of the Contracts. Both Portfolios have the same underwriter and investment adviser. Notwithstanding investments in different instruments, their investment objectives are substantially similar in that each seeks high current income consistent with relative stability of principal through investment in fixed income securities. Additionally, management fees indirectly paid by the Contractowners after the Substitution will be lower than those incurred prior to the Substitution.

4. Additionally, the Substitution is expected to confer economic benefits on Contractowners because: (a) The World Income Portfolio's expenses and net redemptions are expected to make it increasingly difficult for that Portfolio to achieve competitive results; (b) operation of the consolidated Affected Portfolios will result in economies of scale and reduced operating expenses as a result of lower management fees paid by the Government Securities Portfolio; and (c) the size of the Government Securities Portfolio, its competitive return and its historically higher total return and yield suggest that it will offer a more favorable opportunity for achieving a substantially similar investment objective with more competitive results that the World Income Portfolio has been able to achieve, relative to other competitive funds.

5. The Contracts reserve to Equitable Variable the right to replace the shares of one Hudson Trust Portfolio held by the Separate Accounts with shares of another Hudson Trust Portfolio or with another registered investment company, subject to Commission approval. The substitution right is disclosed in the Separate Accounts' prospectuses.

6. Contractowners will incur no transfer fees in connection with the Substitution. The Substitution will have no adverse federal income tax consequences for the Contractowners. Additionally, the Substitution will in no way alter the insurance benefits to Contractowners or the contractual obligations of Equitable Variable. Contractowners will continue to look to Equitable Variable with regard to their rights under the Equitable Variable Contracts.

7. Applicants consent to the following terms of and the conditions to the issuance of an order granting an exemption under section 26(b):

a. Shares of the Government Securities Portfolio will be substituted for shares of the World Income Portfolio, whose investment objective is substantially similar to the investment objective of the Government Securities Portfolio;

b. If a Contractowner that has allocated premiums to the World Income Divisions requests a reallocation of shares before May 1, 1994, the Policy Value of the Contractowner's Equitable Variable Contract will be reallocated for investment to another Hudson Trust Portfolio selected by the Contractowner at no cost to the Contractowner;

c. The Substitution will, in all cases, be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

d. Any expenses and transaction costs triggered by the redemption in connection with the Substitution (e.g., brokerage commissions, custodial fees, accounting fees, etc.) and which are reflected in the net asset value of the World Income Portfolio shares will be assumed by Equitable as the sole remaining shareholder of the World Income Portfolio. Equitable and Alliance will bear all other expenses of the Substitution, including legal and accounting fees and expenses, the cost of prospectus disclosure, this Application and Notices;

e. The Substitution will not be treated as a transfer for purposes of any provisions of the Equitable Variable Contracts that limit allowable transfers;

f. The Substitution will in no way alter the insurance benefits to Contractowners or the contractual obligations of Equitable Variable; and

g. The Substitution will not alter the tax benefits to Contractowners or cause any adverse tax consequences to Contractowners.

Applicants' Legal Analysis—Sections 17(a) and 17(b)

1. Applicants also request an order of the Commission under section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) of the 1940 Act in connection with aspects of the Substitution that may be deemed to be prohibited by section 17(a). Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated

person of such person acting as principal, from selling any security or other property to that company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from the registered investment company.

2. The Substitution may result in transactions prohibited by section 17(a) because of affiliations among the Government Securities Divisions, the World Income Divisions, and the corresponding Trust Portfolios. The Substitution specifically may be deemed to include one or more purchases or sales of securities between the World Income Divisions and the Government Securities Portfolio because the World Income Divisions will purchase shares of the Government Securities Portfolio with the securities received by these Divisions in connection with the redemption in-kind of shares of the World Income Portfolio. Similar issues may arise in connection with the redemption in-kind itself and the consolidation of the Divisions.

3. Section 17(b) of the 1940 Act provides that the Commission shall, upon application, grant an order exempting a proposed transaction otherwise prohibited by Section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned, as recited in its registration statements and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. The Applicants represent that the proposed Substitution satisfies these tests.

4. First, the terms of the Substitution are reasonable and fair and do not involve overreaching on the part of any person concerned. The Substitution will be effected pursuant to the Hudson Trust's procedures for valuing portfolio securities and portfolio securities of the Affected Portfolios are and will be valued in a consistent manner.

Rule 17a–7 under the 1940 Act permits a purchase or sale transaction between registered investment companies or separate series of registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors and/or common officers, subject to certain specified conditions. However, the Substitution will involve the redemption by the World Income Portfolio of securities in-kind rather than for cash and, therefore, will not meet the requirements of subsection (a) of Rule 17a–7. Nevertheless, the Substitution will comply with subsections (b), (c) and (d) of Rule 17a–7 because the transactions: will be effected at the independent current market price, including, where appropriate, amortized cost, of the securities involved; is consistent with the policies of the Government Securities Portfolio and the Government Securities Divisions; and will not involve the payment of any brokerage commission, fee or other remuneration. Applicants believe, moreover, that the proposed transactions satisfy the intent of Rule 17a–7 and that, consequently, there will be no overreaching because all securities redeemed in-kind and used to purchase shares of the Government Securities Portfolio will be consistently valued for all purposes.

5. Second, the proposed Substitution is consistent with the investment policies of both Affected Portfolios because securities received by the Separate Account from the World Income Portfolio from redemptions in-kind will be selected by Alliance to correspond to the investment policies of the Government Securities Portfolio.

6. Third, the Substitution is consistent with the general purposes of the 1940 Act because it will provide Contractowners those economic and other benefits discussed herein.

Conclusion

1. Applicants submit that the exemptive relief requested under section 26(b) of the 1940 Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants further submit that the exemptive relief requested under section 17(b) is appropriate because the terms of the proposed Substitution, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned with the Substitution, as recited in their registration statements and reports filed under the 1940 Act, and the Substitution is consistent with the general purposes of the 1940 Act.

3. Accordingly the Applicants request that the Commission grant the necessary exemptions and approvals pursuant to sections 17(b) and 26(b) of the 1940 Act permitting the Substitution.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1715 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20026; 812–8712]

United of Omaha Life Insurance Co., et al.; Application for Exemption

January 19, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "Act").

APPLICANTS: United of Omaha Life Insurance Company ("United of Omaha"), United of Omaha Separate Account C (the "Variable Account"), and Mutual of Omaha Investors Services, Inc. ("MOIS").

RELEVANT ACT SECTIONS: Applicants seek an order under section 6(c) of the Act granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of the Variable Account, which funds individual flexible payment variable deferred annuity contracts (the "Policies").

FILING DATE: The application was filed on December 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on February 14, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, United of Omaha Life Insurance Company, Mutual of Omaha Plaza, Omaha, Nebraska 68175.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. United of Omaha is a stock life insurance company that was incorporated under the name of United Benefit Life Insurance Company under the Laws of Nebraska on August 9, 1926. In 1981, the company changed its name to United of Omaha Life Insurance Company. United of Omaha is engaged principally in the sale of life insurance, accident and health insurance, and annuity policies, and it is licensed in all states (including the District of Columbia) other than New York. United of Omaha is a wholly-owned subsidiary of Mutual of Omaha Insurance Company.

2. The Variable Account was established as a separate investment account under the laws of Nebraska on December 1, 1993 pursuant to a resolution of United of Omaha's Board of Directors. Under Nebraska law, the assets of the Variable Account are owned by United of Omaha but are held separately from United of Omaha's other assets and are not chargeable with any liabilities arising out of any other separate investments account or any other business of United of Omaha that has no specific and determinable relation to or dependence upon the Variable Account. The income, gains, or losses, realized or unrealized, from assets allocated to the Variable Account are credited to or charged against the Variable Account without regard to other income, gains, or losses of United of Omaha.

3. The Variable Account will invest in shares of one or more of the investment portfolios of the Variable Insurance Products Fund, the Variable Insurance Products Fund II, the Scudder Variable Life Investment Fund, and such other registered investment companies as United of Omaha may make available under the Policies from time to time (each, a "Fund"). Each Fund will be a diversified, open-end management investment company, and may have a number of classes or series.

4. MOIS will serve as the distributor and principal underwriter of certain of the Policies. MOIS is registered under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc. Broker-dealers other than MOIS may also serve as distributors and principal underwriters of certain of the Policies, to the extent the Policies are sold through alternate distribution channels. Any such other broker-dealer will be registered under the Securities Exchange Act of 1934, and will be a member of the National Association of Securities Dealers, Inc. The requested order would apply to any such other broker-dealer.

5. The Policies may be purchased with an initial purchase payment of $5000 on a non-tax qualified basis or in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment. A Policy owner may make additional purchase payments of at least $500 each at any time prior to the annuity starting date. A Policy owner can allocate net purchase payments to United of Omaha's Fixed Account and to one or more subaccounts of the Variable Account. The minimum amount that may be allocated is $500. Several annuity payout options are available to Policy owners. In the event that the Policy owner dies prior to the annuity starting date, a death benefit is payable.

6. United of Omaha will deduct a Policy fee of $30 each Policy year. This charge will be deducted at the end of each Policy year prior to the annuity starting date (and upon a complete surrender) to compensate United of Omaha for the administrative services provided to Policy owners. Currently, this fee is waived if the Policy's accumulation value exceeds $50,000. United of Omaha also deducts a daily administrative expense charge from the assets of each subaccount of the Variable Account. This charge is equal to an effective annual rate of .15% of the net assets of the subaccount. United of Omaha imposes no charge for the first twelve transfers in any Policy year, but may impose a $10 fee for the thirteenth and each subsequent transfer. A withdrawal processing fee equal to the lesser of $25 or 2% of the amount withdrawn will be imposed for the second and each subsequent partial withdrawal request during a single Policy year, including certain withdrawals that are applied to provide annuity payments. However, the withdrawal processing fee will not be deducted on the annuity starting date if the accumulation value is applied after the second Policy anniversary to provide lifetime annuity payments. United of Omaha does not anticipate making any profit from these four charges, none of which will be increased.

7. In order to permit investment of the entire purchase payment (net of any applicable premium tax charge), United of Omaha does not deduct sales charges at the time of investment. However, a contingent deferred sales charge of up to 7% is imposed on certain full or partial Policy surrenders during the first seven years after a purchase payment is made to cover expenses relating to the sale of the Policies, including commissions to registered representatives and other promotional expenses. During the first year after a purchase payment, the withdrawal charge is 7% of the amount withdrawn. The charge declines 1% per year for older purchase payments withdrawn, and becomes 0% in the eighth and subsequent years. Each year, the Policy owner can withdraw up to 10% of total purchase payments (less any previous withdrawals), without imposition of the withdrawal charge. In addition, the withdrawal charge is waived in certain cases. United of Omaha does not anticipate that the withdrawal charge will generate sufficient revenues to pay the cost of distributing the Policies. If this charge is insufficient to cover the distribution expenses, the deficiency will be met from the general account assets of United of Omaha, which may include amounts derived from the charge for mortality and expense risks.

8. United of Omaha seeks to impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Policies. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account, and it will not increase. Of that amount, approximately three-fourths is attributable to mortality risks, and approximately one-fourth is attributable to expense risks. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on United of Omaha. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to United of Omaha.

9. The mortality risk borne by United of Omaha arises from its obligation to make periodic annuity payments regardless of how long all annuitants may live and from its obligation to pay a death benefit that may be greater than the Policy's accumulation value. The expense risk assumed by United of Omaha is that its actual administrative costs will exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to section 6(c) of the Act, grant exemptions from the provisions described below to the extent necessary to permit the assessment of the daily charge for mortality and expense risks. Applicants state that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state further that the proposed mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge.

2. Section 26(a)(2)(C) of the Act provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the Act. Applicants request an exemptive order because the proposed mortality and expense risk charge is not a bookkeeping or administrative charge allowed by sections 26(a)(2) and 27(c)(2).

3. United of Omaha represents that the mortality and expense risk charge is a reasonable charge to compensate it for assuming the risk that annuitants under the Policies will live longer as a group than had been anticipated in setting the annuity rates guaranteed in the Policies; for the risk that the accumulation value will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the administrative charges.

4. United of Omaha represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon United of Omaha's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. United of Omaha will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. United of Omaha has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Policy owners. The basis for such conclusion is set forth in a memorandum which will be maintained by United of Omaha at its administrative offices and will be available to the Commission.

6. United of Omaha also represents that the Variable Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Applicants' Conclusion

Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit them to deduct on a daily basis a charge equal to 1.25% annually of the assets of the Variable Account for the assumption of mortality and expense risks described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1714 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20030; 812–8736]

The Alger Fund, et al.; Notice of Application

January 21, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Alger Fund (the "Fund"), any future series thereof, and any registered investment company for which Fred Alger & Company, Incorporated serves in the future as principal underwriter or for which any person controlling, controlled by, or under common control with Fred Alger & Company, Incorporated (within the meaning of section 2(a)(9) of the Act) may in the future serve as principal underwriter; and Fred Alger & Company, Incorporated (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act amending previous orders that granted an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: The Fund previously received exemptive orders that permit it to impose a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and waive the CDSC in certain instances. Applicants now seek to amend the prior orders to permit the Fund to waive the CDSC in connection with redemptions effected by registered investment advisers, banks and trust companies and other financial institutions exercising discretionary authority with respect to the money invested in Fund shares and on redemptions effected by registered investment advisers for their own account.

FILING DATE: The application was filed on December 21, 1993 and amended on January 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 15, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, The Alger Fund, 75 Maiden Lane, New York, New York 10038; Fred Alger & Company, Incorporated, 30 Montgomery Street, Jersey City, New Jersey 07302.

FOR FURTHER INFORMATION CONTACT:

Marc Duffy, Staff Attorney, at (202) 272–2511, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act. The Fund is a series company currently composed of seven series: The Alger Money Market Portfolio, the Alger Income and Growth Portfolio, the Alger Small Capitalization Portfolio, the Alger Growth Portfolio, the Alger Balanced Portfolio, the Alger MidCap Growth Portfolio, and the Alger Leveraged AllCap Portfolio (collectively, the "Portfolios"). The Distributor is the distributor for the Fund.

2. In 1986, the Commission issued an order to the Fund to permit the Fund to impose a CDSC on certain redemptions of shares of the Portfolios and waive the CDSC in certain instances (the "Prior Order").[1] In 1987, the Prior Order was amended to include an additional waiver category (together with the Prior Order, the "Prior Orders").[2] The present application seeks to expand the circumstances under which the Fund may waive the CDSC. The order sought by this application will, if issued, supersede the Prior Orders.

3. No CDSC is imposed upon the redemption of shares of a Portfolio to the extent that the net asset value of the shares redeemed does not exceed (a) the current net asset value of shares purchased more than six years prior to the redemption, plus (b) the current net asset value of shares purchased through reinvestment of dividends or capital gains distributions, plus (c) increases in the net asset value of the shares above purchase payments made with respect to a Portfolio during the preceding six years. The amount of the CDSC depends on the number of years that the shareholder has held the shares from which an amount is being redeemed. The Fund assesses no CDSC on exchanges of shares among Portfolios.

4. In accordance with the terms of the Prior Orders, the Fund waives the CDSC on the following redemptions: (a) Any partial or total redemption of shares of a shareholder who dies or becomes disabled, so long as the redemption is requested within one year of death or initial determination of disability; (b) any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans; (c) redemptions effected pursuant to the Fund's automatic cash withdrawal plan of amounts up to 2% of the value of a shareholder's shares in a Portfolio at the time the withdrawal plan commences; (d) redemptions effected by (i) employees of Alger Associates, Inc. and its subsidiaries, (ii) IRAs, Keogh plans and employee benefit plans for those employees, and trusts of which those individuals are beneficiaries, as long as orders for the Fund's shares on behalf of those individuals and trusts are placed by the employees; (e) redemptions effected by (i) accounts managed by investment advisory subsidiaries of Alger Associates, Inc. that are registered under the Investment Advisers Act of 1940, (ii) employees, participants and beneficiaries of those accounts, (iii) IRAs, Keogh plans and employee benefit plans for those employees, participants and beneficiaries and (iv) spouses and minor children of those employees, participants and beneficiaries as long as orders for the Fund's shares are placed by the employees, participants and beneficiaries; (f) redemptions effected by directors or trustees or any investment company for which Alger Associates, Inc. or any of its subsidiaries serves as investment adviser or distributor; (g) redemptions effected by an investment company registered under the Act in connection with the combination of the investment company with the Fund by merger, acquisition of assets or by any other transaction; (h) redemptions effected pursuant to the Fund's right to liquidate involuntarily a shareholder's account in any Portfolio with a current value of less than $250; and (i) redemptions of shares of the Portfolios held through defined contribution plans with respect to which Fred Alger Management, Inc. or an affiliate thereof provides certain non-fiduciary services.

5. The Fund also offers a one-time only reinvestment privilege under which a shareholder who redeems shares subject to the CDSC and reinvests the proceeds of the redemption within 30 days after the redemption will receive a credit against the amount of the CDSC paid. The percentage of the CDSC credited to the shareholder is the same as the percentage of the redemption proceeds that are reinvested. The Distributor will pay any credit from its own assets.

6. In the present application, applicants also propose to waive the CDSC on redemptions effected by registered investment advisers, banks and trust companies and other financial institutions exercising discretionary authority with respect to the money invested in Fund shares and on redemptions effected by registered investment advisers for their own account.

Applicants' Legal Analysis

1. The requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the additional waiver is appropriate because shares of a Portfolio with respect to which the CDSC would be waived are purchased with little or no selling effort or expense. In addition, the waiver will encourage sales of the Fund's shares which will be beneficial to all the Fund's shareholders.

2. Waiving the CDSC is consistent with the policies underlying section 22(d) of the Act, which prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. The waiver will not result in the occurrence of any of the abuses to which section 22(d) is directed and will not harm the Fund or its shareholders or unfairly discriminate among shareholders or purchasers.

Applicants' Condition

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (November 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1711 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–11–M

[1] Investment Company Act Release No. 15288 (Sept. 5, 1986) (notice) and 15404 (Nov. 7, 1986) (order).

[2] Investment Company Act Release No. 16122 (Nov. 12, 1987) (notice) and 16170 (Dec. 10, 1987) (order)

[Release No. IC–20028; 812–7913]

The Laurel Funds, Inc., et al.; Notice of Application

January 19, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Laurel Funds, Inc. ("Laurel Fund"); The Boston Company Fund ("TBC Fund"); The Boston Company Investment Series ("TBCIS Fund"); and The Boston Company Tax-Free Municipal Funds ("TBCTF Fund") (together, the "Funds"); Frank Russell Investment Management Company ("FRIMCo"); Mellon Bank, N.A. ("Mellon Bank"); Russell Fund Distributors, Inc. ("RFD"), and Funds Distributor, Inc. ("FDI" and together with RFD, the "Distributors").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue an unlimited number of classes of shares representing interest in the same portfolio of securities, and assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and waive the CDSC in certain instances.

FILING DATES: The application was filed on May 4, 1992, and amended on August 24, 1992, November 20, 1992, February 19, 1993, May 20, 1993, and January 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 14, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and 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. Applicants: The Laurel Funds, Inc., Frank Russell Investment Management Company, and Russell Fund Distributors, Inc., 909 A Street, Tacoma, Washington 98402; Mellon Bank, N.A., One Mellon Bank Center, Pittsburgh, Pennsylvania 15258; Fund Distributors, Inc., One Exchange Place, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, at (202) 272–2511, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Laurel Fund is a Maryland corporation registered under the Act as an open-end management investment company. Laurel presently consists of the following separate investment portfolios: The Laurel Funds, Inc., Laurel Prime Money Market I Portfolio, Laurel U.S. Treasury Money Market I Portfolio, Laurel Tax-Exempt Money Market I Portfolio, Laurel Prime Money Market II Portfolio, Laurel Government Money Market II Portfolio, Laurel U.S. Treasury Money Market II Portfolio, Laurel Stock Portfolio, Laurel Ginnie Mae Portfolio, Laurel Intermidate Income Portfolio, Laurel Short-Term Bond Fund Portfolio, Laurel Tactical Asset Allocation Portfolio, Laurel U.S. Treasury Only Money Market Portfolio, Laurel S&P 500 Stock Index Portfolio, Laurel Balanced Portfolio, Laurel Midcap Stock Portfolio, Laurel Bond Market Index Portfolio, and Laurel European Portfolio.

2. FRIMCo is the administrator, and the RFD is the distributor of Laurel Fund. Mellon Bank is Laurel Fund's investment adviser, custodian, and transfer agent.

3. TBC Fund, TBCIS Fund, and TBCTF Fund are Massachusetts business trusts. TBC Fund presently consists of the following series: Capital Appreciation Fund, Special Growth Fund, Government Money Fund, Cash Management Fund, Managed Income Fund, Asset Manager's Fund, and Intermediate Term Government Securities Fund. TBCIS Fund presently consists of the following series: International Fund, Short-Term Bond Fund, Asset Allocation Fund, and Contrarian Fund. TBCTF Fund consists of the Massachusetts Tax-Free Money Fund, Massachusetts Tax-Free Bond Fund, Tax-Free Money Fund, Tax-Free Bond Fund, California Tax-Free Money Fund, California Tax-Free Bond Fund, New York Tax-Free Money Fund, and New York Tax-Free Bond Fund. The Boston Company Advisors, Inc. is the investment adviser for, and FDI is the Distributor for TBC Fund, TBCIS Fund, and TBCTF Fund. The Boston Company Advisors, Inc. is an indirect subsidiary of Mellon Bank Corporation.

4. Applicants request that the relief granted hereby apply to all existing and future portfolios of Laurel Fund, TBC Fund, TBCIS Fund, and TBCTF Fund (the "Portfolios"), and to all future registered investment companies distributed by RFD or FDI, or for which Mellon Bank serves in the future as investment adviser, or for which any person controlling, controlled by, or under common control with Mellon Bank (within the meaning of section 2(a)(9) of the Act) may in the future serve as investment adviser. Any such future investment companies that rely on the requested relief will abide by all of the representations and conditions to the application.

5. The Portfolios consist of both money market funds and non-money market funds. Shares of the Portfolios are sold and redeemed daily at net asset value without a sales or redemption charge. The Funds have adopted plans pursuant to rule 12b–1 under the Act for using up to 0.35% of each Portfolio's net assets annually to aid in the distribution of their shares.

6. Applicants propose to create a multi-class distribution system (the "Multi-Class System"). The Funds will create an unlimited number of additional classes of shares in some or all of their existing and future Portfolios. Shares will be issued in connection with either a plan adopted pursuant to rule 12b–1 under the Act (the "12b–1 Plan") and/or a non-rule 12b–1 administrative plan (the "Administrative Plan," and collectively with the 12b–1 Plan, the "Plans").

7. With respect to each class of shares, the Funds will enter into a 12b–1 Plan agreement and/or an Administrative Plan agreement (the "Plan Agreements") with groups, organizations or institutions ("Organizations") to provide certain services to the clients, members, or customers of such Organizations who beneficially own shares offered in connection with a particular class ("Class Shareholders").

8. The services to be provided by Organizations to their Class Shareholders under the 12b–1 Plan could include: providing facilities to answer questions from prospective investors about the Funds; receiving and answering correspondence, including requests for prospectuses and statements of additional information; preparing, printing, and delivering prospectuses and shareholder reports to prospective Class Shareholders; complying with federal and state securities laws pertaining to the sale of shares; and assisting investors in completing application forms and selecting dividend and other account options.

9. The services to be provided by Organizations to their Class Shareholders under the Administrative Plan could include: receiving, aggregating, and processing Class Shareholder orders; sweep program servicing; shareholder sub-accounting; providing and maintaining elective Class Shareholder services such as check writing and wire transfer services; providing and maintaining pre-authorized investment plans; periodic communications with Class Shareholders; acting as the sole shareholder of record and nominee for Class Shareholders; maintaining account records for Class Shareholders; answering questions and handling correspondence from Class Shareholders about their accounts; issuing confirmations for transactions by Class Shareholders; and similar account administrative services.

10. The services provided pursuant to the Plans will augment or replace (and not be duplicative of) the services to be provided to the Portfolios by Mellon Bank, the Distributors, or FRIMCo. Applicants propose to "unbundle" services provided to the Portfolios to permit Organizations to select services they wish to provide to their Class Shareholders, with such services to be tailored to their Class Shareholders' needs.

11. With respect to each class of shares, a Portfolio will pay an Organization for its services and assistance in accordance with the terms of its Plan and related Plan Agreement ("Plan Payments") and the expense of such payments will be borne entirely by the owners of the class of shares of the Portfolio to which each Plan Agreement relates. Plan Payments will not exceed 0.50% per year of the average daily net asset value of shares owned by Class Shareholders covered by such Plan Agreement. In addition, for any Organization having both a 12b–1 Plan and Administrative Plan, aggregate Plan Payments will not exceed 1.00% per year. Such maximum limits on Plan Payments might be increased in the future, upon compliance with the provisions of the related Plan, but will not be increased over the limits stated above unless the requested exemptive order is amended, or a no-action position obtained from the SEC staff permitting such increase.

12. Applicants at all times will comply with Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as amended, with respect to asset-based distribution charges.

13. All expenses of the Funds that cannot be attributed directly to any one Portfolio ("Fund Expenses") will be allocated to each Portfolio based on the relative net assets of such Portfolio. Fund Expenses could include, for example, directors' fees and expenses, audit and legal fees, insurance premiums, SEC and state blue sky registration fees, and dues paid to organizations such as the Investment Company Institute.

14. Certain expenses may be attributable to a Portfolio, but not to a particular class ("Portfolio Expenses"). Portfolio Expenses will be allocated to a class based upon the relative percentage of net assets of such class. Portfolio expenses could include, for example, advisory fees, accounting fees, custodian fees, and fees related to preparation of separate documents of the Portfolio. In addition, the gross income of each Portfolio will be allocated on a *pro rata* basis to each class based on the relative net assets of each class, and then divided by the number of outstanding shares in each class.

15. In addition to the cost of Plan Payments, each class will bear certain expenses attributable specifically to such class, as set forth in Condition 1 ("Class Expenses"). The determination of which Class Expenses will be allocated to a particular class and any subsequent changes thereto will be determined by the Board of Directors of the Fund in the manner described in Condition 3.

16. The Funds' investment adviser may choose to reimburse or waive Class Expenses on certain classes on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by the investment adviser may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same portfolio.

17. In addition, the investment adviser may waive or reimburse Fund Expenses and/or Portfolio Expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Fund Expenses and/or Portfolio Expenses are waived or reimbursed for each class. Thus, any Fund Expenses that are waived or reimbursed would be credited to each class of a Portfolio based on the relative net assets of the classes. Similarly, any Portfolio Expenses that are waived or reimbursed would be credited to each class of that Portfolio according to the relative net assets of the classes. Fund Expenses and Portfolio Expenses apply equally to all classes of a given Portfolio. Accordingly, it may not be appropriate to waive or reimburse Fund Expenses or Portfolio Expenses at different levels for different classes of the same Portfolio.

18. Dividends paid to each class of shares will be declared and paid on the same days and at the same times, and except as noted below, will be determined in the same manner and paid in the same amounts. Because different Plan Payments and Class Expenses may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of the other classes of shares of a Portfolio.

19. Applicants also request an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d), of the Act and rule 22c-1 thereunder, to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares, and waive the CDSC in certain instances. The amount of the CDSC charged will vary, depending on the length of time shares have been held.

20. The CDSC typically will range from 4% to 6% (but can be higher or lower) on shares redeemed in the first year of purchase and will be reduced, typically at a rate of 1% per year over the applicable CDSC period, so that redemptions of shares held after that period will not be subject to a CDSC.

21. The CDSC will not be imposed on redemptions of shares purchased in connection with the reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period. In determining whether a CDSC is applicable, a redemption will be made first of shares derived from reinvestment of distributions, second of shares purchased prior to the CDSC period, and third of shares purchased during the CDSC period.

22. The Portfolios will waive the CDSC on redemptions: (a) following a shareholder's death or disability, as defined in section 72(m)(7) of the Internal Revenue Code, (b) in connection with distributions from an individual retirement account or other qualified retirement plan following death, total or permanent disability, or reaching retirement age, and (c) in whole or in part in connection with shares sold to: (i) Customers of Mellon Bank Corporation, its subsidiaries, and affiliates ("Mellon Bank Corp."), and The Boston Company, its subsidiaries (including The Boston Company

Advisors, Inc.) and affiliates ("The Boston Company"), (ii) directors and officers of the Funds, and (iii) employees and retirees of Mellon Bank Corp., The Boston Company, the Distributors, and FRIMCo, as disclosed in the registration statement for the class.

Applicants' Legal Analysis:

1. Applicants seek an exemptive order to the extent that the Multi-Class System might be deemed to (a) result in a "senior security" within the meaning of section 18(g) of the Act, and thus be prohibited by section 18(f)(1); and (b) violate the equal voting provisions of section 18(i) of the Act.

2. Section 18 is intended to prevent investment companies from issuing excessive amounts of senior securities and thereby increasing unduly the speculative character of their junior securities, or from operating without adequate assets or reserves. The proposed arrangement does not involve borrowings and does not affect the Portfolios' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of a Portfolio since all shares will participate *pro rata* in all of a Portfolio's income and expenses, with the exception of Plan Payments and Class Expenses.

3. The proposed allocation of expenses and voting rights is equitable and will not discriminate against any group of shareholders. Further, since all shares of a Portfolio will be redeemable at all times, no class of shares will have any preference or priority in the usual sense (that is, no class will have distribution or liquidation preferences will respect to particular assets, and no class will be protected by any reserve or other account).

4. Applicants believe that the imposition of the CDSC is fair, consistent with the policy and provisions of the Act, and in the best interest of those shareholders on whom it is imposed. Shares sold subject to a CDSC will be designed to permit the investor to purchase shares without the assessment of a front-end sales load, and at the same time permit the Distributors to pay securities dealers selling shares of a class a commission on the sale of those shares. Proceeds from the CDSC will be used in whole or in part to defray the expenses of the Distributors and of the selling broker-dealers relating to providing distribution-related services to the investor choosing those classes.

Applicants' Conditions

If the requested order is granted, applicants agree to the following conditions:

1. Each class of shares of a Portfolio will represent interests in the same portfolio of investments, and be identical in all respects, except for differences related to: (a) Certain Class Expenses, which are limited to: (i) Transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of the Funds' administrator and other administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) directors' fees incurred as a result of issues relating to one class of shares; and (viii) organizational expenses incurred to establish a particular class of shares; (b) expenses assessed to a class pursuant to a 12b–1 Plan or Administrative Plan; (c) voting rights as to matters exclusively affecting one class of shares; (d) dividend and net asset value differences reflecting different Plan Payments and Class Expenses; (e) class designation; and (f) exchange privileges. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of the Funds, including a majority of the independent directors will approve the offering of different classes of shares pursuant to the Multi-Class System. The minutes of the meetings of the directors regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the directors' determination that the proposed Multi-Class System is in the best interests of the Funds, the Portfolios, and shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of directors of the Funds, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Portfolio to meet Class Expenses shall provide to the board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Portfolios for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser and distributor of the Funds will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the investment adviser and the distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The Distributors will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

6. The Administrative Plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The directors will receive quarterly and annual statements concerning the amounts expended under the Administrative Plans and 12b–1 Plans and the related Plan Agreements complying with paragraphs (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

8. Dividends paid by a Portfolio with respect to a class of shares will be calculated in the same manner, at the same time, on the same day, and will be in the same per share amount as dividends paid by that Portfolio with

respect to each other class of shares of the Portfolio, except that Plan Payments made by a class under its Plan and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which report has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agrees to provide), will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members will be limited to the director, an associate director, the chief accountant, the chief financial analyst, an assistant director, and any regional administrators or associate and assistant administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in Statement of Auditing Standards ("SAS") No. 44 of the American Institute of Certified Public Accountants ("AICPA") and the ongoing reports will be "reports on policies and procedures placed in operation and tests of effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in Condition 9 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing report referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectuses of each class of a Portfolio will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another in the Portfolio.

12. The conditions pursuant to which the exemptive order is granted, and the duties and responsibilities of the directors with respect to the Multi-Class System will be set forth in guidelines to be furnished to the directors.

13. A Portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, and exchange privileges (if any) applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Any shareholder report to a class of shares which contains expense and performance data will disclose the respective expenses and performance data applicable to all classes of shares of that Portfolio. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it also will disclose the respective expenses and/or performance data applicable to all classes of shares of a Portfolio. The information provided by applicants for publication in any newspaper or similar listing of a Portfolio's net asset value or public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the requested exemptive order does not imply SEC approval, authorization of, or acquiescence in any particular level of payments that a Portfolio may make to Organizations pursuant to any Plan in reliance on the exemptive order.

15. Applicants will comply with proposed rule 6c–10 under the Act, (Investment Company Act Release No. 16619 (November 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1710 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M4704

Issuer Delisting; Application To Withdraw From Listing and Registration; (Material Sciences Corporation, Common Stock, $0.02 Par Value) File No. 1–8803

January 21, 1994.

Material Sciences Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on October 15, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before February 11, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–1712 Filed 1–26–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2694; Amdt. 2]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective January 7, 1994, to include Pulaski County 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 contiguous Missouri counties of Camden, Maries, and Miller may be filed until the specified date at the previously designated location.

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 number for Missouri is 813300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 13, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–1743 Filed 1–26–94; 8:45 am]

BILLING CODE 8025–01–M4704

Helena District Advisory Council; Public Meeting

The U.S. Small Business Administration Helena District Advisory Council will hold a public meeting beginning at 12 p.m. on Thursday, February 17th, and adjourning at 2 p.m. Friday, February 18, 1994. This meeting will be held at the Montana Club, 24 West 6th Avenue, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jo Alice Mospan, District Director, U.S. Small Business Administration, 301 South Park, Drawer 10054, Helena, Montana 59626–0054, (406) 449–5381.

Dated: January 13, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–1741 Filed 1–26–94; 8:45 am]

BILLING CODE 8025–01–M

Providence District Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting at 8 a.m. on Tuesday, February 8, 1994, at the U.S. Small Business Administration, 380 Westminster Street, room 511, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401 528–4580).

Dated: January 21, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–1742 Filed 1–26–94; 8:45 am]

BILLING CODE 8025–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Todds Tavern, Spotsylvania County, VA, California Pines, Modoc County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Todds Tavern, located in Spotsylvania County, Virginia, and the California Pines property, located in Modoc County, California, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until April 27, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

Todds Tavern: Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue, NE., Marquis One Tower, Tenth Floor, Atlanta, GA 30303, (404) 230–6594; Fax (404) 225–5092.

California Pines: Mr. Steven Reid, Resolution Trust Corporation, Dallas Field Office; 3500 Maple Avenue, Reverchon Plaza, suite 300, Dallas, TX 75219–3935, (214) 443–4738; Fax (214) 443–6574.

SUPPLEMENTARY INFORMATION: The Todds Tavern property is located off of Virginia Route 612 about one-quarter mile west of the intersection of Route 612 and Route 613, Spotsylvania County, Virginia. The site has a high potential of containing Civil War trench sites and is adjacent to the Fredericksburg Spotsylvania National Military Park. The Todds Tavern property consists of approximately 421 acres of undeveloped land. The property is irregular in shape and the terrain is primarily forested with pine trees, sandy soil, and rolling hills.

The California Pines property is located approximately nine miles southwest of Alturas, Modoc County, California. The site has recreational value and is adjacent to lands managed by the Bureau of Land Management. The California Pines property consists of approximately 700 acres of undeveloped land and unimproved lots. The property is characterized by fairly level land, forested mountains and open space. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before April 27, 1994, by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: [insert name of property]

Federal Register Publication Date: _____ [insert Federal Register publication date].

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the

Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price and method of financing).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative: (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: January 19, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–1644 Filed 1–26–94; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1), notice is hereby given of a special meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting was originally scheduled to take place on Friday, January 21, 1994, but had to be rescheduled due to severe weather conditions on the east coast and the natural disaster on the west coast. The meeting has been rescheduled to take place on Friday, January 28, 1994, beginning at 1:30 p.m. E.S.T.

This meeting will be conducted as a teleconference originating in room 2203 (Multi-Media Room) in the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC. The purpose of the meeting is to consider certain information on launch requirements requested by the Secretary to support the Department's participation in the White House Office of Science and Technology Policy (OSTP) Interagency Working Group (IWG) on Space Transportation. Fewer than fifteen (15) days notice of this special meeting is provided in order for the Department to meet the IWG timetable for preparation of a summary report.

This meeting is open to the interested public by speakerphone in room 2203; however, space may be limited. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366–2980.

Dated: January 24, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94–1924 Filed 01–25–94; 2:30 pm]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–94–3]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 16, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27518.

Petitioner: Mr. Glen A. Fox.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/Disposition: To permit the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27534.

Petitioner: Mr. Archie Boyian.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/Disposition: To permit the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27544

Petitioner: Mr. Robert W. Iverson.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow Messrs. Johnson, Reed and Wooke to serve as copilots in part 121 air carrier operations for Kiwi International Airlines after reaching their 60th birthdays.

Dispositions of Petitions

Docket No.: 25210.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 63.39(b) (1) and (2) and 121.425(a)(2) (i) and (ii).

Description of Relief Sought/Disposition: To extend Exemption No. 4901 to permit part 121 certificate holders to train and check flight engineer candidates in the performance of the airplane pre-flight inspection using advanced pictorial means instead of the airplane and to complete training and checking of flight engineer applicants in an appropriate simulator instead of taking that portion of the practical test in an airplane in flight.

Grant, January 7, 1994, Exemption No. 4901C

Docket No.: 27001.
Petitioner: Jetstream Aircraft Limited.
Sections of the FAR Affected: 14 CFR 25562(c)(5) and 25.785(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 5587 regarding Head Injury Criteria (HIC) for front row passenger seating in Jetstream Series 4100 airplanes permit.

Partial Grant, December 29, 1994, Exemption No. 5587A

Docket No.: 25483.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 45.11 (a) and (d) and 91.417(d).
Description of Relief Sought: To extend Exemption No. 4902 to continue to allow all aircraft operating under parts 121 and 127 of the FAR and all aircraft operating in commuter air carrier operations to be operated without complying with the requirements pertaining to location of identification plates and carriage of FAA form 337 as evidence of fuel tank installations in the passenger or baggage compartments.

Grant, January 13, 1994, Exemption No. 4902D

Docket No.: 27457.
Petitioner: Daniel Webster College.
Sections of the FAR Affected: 14 CFR 141.35(d)(2).
Description of Relief Sought: To allow Miss Robin L. Bray to serve as Chief Flight Instructor (CFI) at Daniel Webster College without the required 2000 hours as pilot in command.

Partial Grant, January 7, 1994, Exemption No. 5829

Docket No.: 27565.
Petitioner: Quassar de Mexico S.A. de C.V. (Quassar).
Sections of the FAR Affected: 14 CFR 129.18.
Description of Relief Sought/ Disposition: To permit the petitioner to operate in U.S. airspace, from December 31, 1993 to January 31, 1994, without the required TCAS II equipment installed in its two B–727 aircraft.

Denial, January 7, 1994, Exemption No. 5826

Docket No.: 27572.
Petitioner: American International Airways.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought: To allow the petitioner to operate four of its aircraft in the United States without installation of windshear equipment from December 31, 1993 to January 14, 1994.

Withdraw, January 10, 1994

[FR Doc. 94–1721 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier/ General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on February 18, 1994, at 8:30 a.m. Arrange for oral presentations by February 8, 1994.

ADDRESSES: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., suite 1100, Washington, DC, in conference room A.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Meeting Coordinator, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3493; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to consider air carrier/general aviation maintenance issues. The meeting will be held on February 18, 1994, at ATA, 1301 Pennsylvania Avenue, NW., suite 1100, Washington, DC, in conference room A. The agenda will include:

- Report on the status of recommendations submitted to the FAA by the Part 65 Working Group.
- Plan of action and milestones for Part 65 Phase II.
- Report on the status of the Maintenance Recordkeeping draft NPRM.
- Report on the status of the International Airworthiness Communications draft NPRM.
- Plan of action and milestones for the Major/Minor Working Group.
- Plan of action and milestones for the Parts Approval Action Team Phase III Working Group.
- Discussion of future activities and other business.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before February 8, 1994, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 35 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 14, 1994.

Frederick J. Leonelli,
Assistant Executive Director for Air Carrier/ General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–1647 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the executive committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 10, 1994, at 8:30 a.m. Arrange for oral presentations by February 3, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., suite 801, Washington, DC, 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the executive committee to be held on February 10, 1994, at the General Aviation Manufacturers Association, 1400 K Street, NW., suite 801, Washington. The agenda will include:

- An update on the FAA/JAA Harmonization Program.
- JAA membership on the Executive Committee.
- A discussion of direct rulemaking for ARAC documents.

- Follow-up on open action items.
- A status report on working group and internal FAA procedures.
- Status reports on issues.
- Other business.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by February 3, 1994, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 21, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–1648 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–30–M

National Highway Traffic Safety Administration

[Docket No. 94–06; Notice 1]

Receipt of Petition for Determination That Nonconforming 1991 Mercedes-Benz 500SEL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 Mercedes-Benz 500SEL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 Mercedes-Benz 500SEL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 28, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1991 Mercedes-Benz 500SEL (Model ID 126.037) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1991 Mercedes-Benz 420SEL, which was manufactured for importation into, and sale in the United States, and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contends that it carefully compared the 1991 model 500SEL to the 1991 model 420SEL, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1991 model 500SEL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1991 model 420SEL, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 500SEL is identical to the 1991 model 420SEL with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence.* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the 1991 model 500SEL is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installment of U.S.- model headlamp assemblies with incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a

VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of an ignition switch-actuated seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S. model belts equipped with retractors; (c) installation of knee bolsters to augment the vehicle's airbag-based automatic restraint system.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 500SEL must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Station, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–1665 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–08; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 Peugeot 405 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 Peugeot 405 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Peugeot 405 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 28, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1989 Peugeot 405 passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1989 Peugeot 405 that PSA Peugeot Citroen/USTR manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S.-certified 1989 Peugeot 405 to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S.-certified 1989 Peugeot 405, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1989 Peugeot 405 is identical to the U.S-certified 1989 Peugeot 405 with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 220 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield*

Retention, 216 *Roof Crush Resistance*, and 219 *Windshield Zone Intrusion*.

Petitioner also contends that the non-U.S.-certified 1989 Peugeot 405 is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.*

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* Installation of an audible seat belt warning system.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Standard No. 302 *Flammability of Interior Materials:* Treatment of interior materials with a fire retardant spray.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1989 Peugeot 405 must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–1666 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–07; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 300CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 300CE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 300CE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 28, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 300CE (Model ID 124.051) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1990 Mercedes-Benz 300CE that Daimler Benz A.G. manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S.-certified 300CE to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S.-certified 300CE, as originally manufactured, conforms to many Federal motor vehicle safety

standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S.-certified 1990 model 300CE is identical to the U.S.-certified 1990 model 300CE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the non-U.S.-certified 1990 model 300CE is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Review Mirrors:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) replacement of the existing type 1 rear seat belts with U.S.-model belts equipped with retractors; (c) installation of knee bolsters to augment the vehicle's airbag-based automatic restraint system.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1990 model 300CE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–1667 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–05; Notice 1]

Receipt of Petition for Determination That Nonconforming 1970 Ferrari 365 GT 2+2 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1970 Ferrari 365 GT 2+2 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1970 Ferrari 365 GT 2+2 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 28, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that

it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer No. R–90–006) has petitioned NHTSA to determine whether 1970 Ferrari 365 GT 2+2 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1970 Ferrari 365 GT 2+2 that was manufactured for importation into and sale in the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 1970 Ferrari 365 GT 2+2 to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1970 Ferrari 365 GT 2+2, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1970 Ferrari 365 GT 2+2 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Leave Sequence * * *, 103 Defrosting and Defogging System,* 104 *Windshield Wiping and Washing Systems,* 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* and 211 *Wheel Nuts, Wheel Discs and Hubcaps.*

Petitioner also contends that the non-U.S. certified 1970 Ferrari 365 GT 2+2 is capable of being readily modified to meet the following standards, in he manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning buzzer.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–1668 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–09; Notice 1]

Receipt of Petition for Determination That Nonconforming 1971 Ferrari Daytona 365 GTB 4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1971 Ferrari Daytona 365 GTB 4 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1971 Ferrari Daytona 365 GTB 4 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 28, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either

manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. A the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland, ("J.K.") (Registered Importer No. R–90–006) has petitioned NHTSA to determine whether 1971 Ferrari Daytona 365 GTB 4 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1971 Ferrari Daytona 365 GTB 4 that was manufactured for importation into and sale in the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 1971 Ferrari Daytona 365 GTB 4 to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1971 Ferrari Daytona 365 GTB 4, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified conunterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1971 Ferrari Daytona 365 GTB 4 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, and 211 *Wheel Nuts, Wheel Discs and Hubcaps*.

Petitioner also contends that the non-U.S. certified 1971 Ferrari Daytona 365 GTB 4 is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odmeter from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning buzzer.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–1664 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Dockets No. 90–06 and 91–20 GR]

Report on Rear Hatch, Tailgate, and Back Door Opening in Crashes and Occupant Ejection Through the Back Area

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a report concerning "Door Opening and Occupant Ejection through Rear Hatches, Tailgates, and Other Back Doors." This report analyzes the available data on door opening and occupant ejection from hatchback cars, stationwagons, sport utility vehicles, and light vans—vehicles frequently equipped with a rear hatch, tailgate, or other back door—that were involved in towaway crashes. This report was done as part of the agency's effort to understand the mechanisms of injury in vehicle crashes. It updates a 1990 report on "Hatchback, Tailgate, and Back Door Opening in Crashes and Occupant Ejection through the Back Area," by adding four more years of the agency's detailed data on door opening and occupant ejection. The agency seeks public review and comment on this report.

DATES: Comments should be received no later than March 28, 1994.

ADDRESSES: Interested persons may obtain a free copy of the report by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket hours, 8 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Patricia Breslin, Director, Office of Vehicle Safety Standards, Rulemaking, National Highway Traffic Safety Administration, room 5320, 400 Seventh Street SW., Washington, DC 20590 (202–366–0842).

Issued: January 24, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–1727 Filed 1–26–94; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Citizen Action Groups Project for Mongolia

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for private, non-profit organizations to develop indigenous, non-governmental, professional, civic, philanthropic, or issue-oriented institutions and citizen exchange organizations. These projects should link the U.S. organization's exchange interests with counterpart organizations and groups in Mongolia.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the Mongolian Citizen Action Groups Project. This announcement number is *E/P–94–19*. Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on March 11, 1994. Faxed documents will not be accepted, nor will documents postmarked March 11, 1994, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The grant project activity should begin after June 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: Mongolia Citizen Action Groups (E/P–94–19), Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, institutions should contact: Elroy Carlson, American Republics and East Asia and Pacific Division, Office of Citizen Exchanges (E/P), room 216, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone 202/619–5326, fax 202/260–0437 to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of the Mongolian Citizen Action Groups Project

Overview

While Mongolia's formal governmental institutions continue their transition to democracy, its private sector is moving at a slower pace. Community action groups and arts councils are in a formative stage, with little understanding of their potential roles and opportunities in a democratic society. Fund-raising and techniques advocating change outside governmental channels are almost unknown. This project focuses on facilitating the development of new citizen groups and associations, providing information to leaders who are eager to create these institutions and consortia. The development of citizen action groups should respond to the needs and interests of the people of Mongolia. U.S. support is designed to provide an array of information or models from which Mongolian citizen activists may wish to choose. USIA encourages proposals that feature "train and trainers" models; the creation of indigenous training centers; schemes to create professional networks or professional associations to disseminate information; and other enduring aspects.

Projects may include: study tours in the U.S. for small groups; short-term, non-technical workshops conducted in Mongolia; four- to ten-week internships in the U.S.; planning trips or consultations in Mongolia; and the development of specialized training materials.

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Proposals must be for projects that enhance the growth of indigenous, non-governmental, professional, civic, philanthropic, or issue-oriented institutions and citizen exchange organizations. They should serve as an important avenue for community participation in problem solving, quality of life enhancement, and professional development.

All proposals should demonstrate:

(1) In-depth, substantive knowledge of the relevant issues;

(2) Established connections with partner institutions;

(3) The capacity to organize and conduct the program, including appropriate orientation activities for the participants; detailed work plan for all phases of the project; tentative agendas for study tours, workshops, and internships; letters of commitment from internship hosts; and selection procedures.

USIS post consultation by applicants, prior to submission of proposals, is recommended. Address inquiries to the Public Affairs Officer, American Embassy (USIS) Ulaanbaatar, PSC 461, Box 300, FPO AP 96521–0002; telephone: 976–1–329–095; fax: 976–1–320–776.

USIA will give priority to proposals from U.S. organizations that have partner organizations in Mongolia or neighboring regions, which will assist logistically and will contribute to the realization of program goals and objectives and will themselves be enhanced by the program. Applicants are encouraged to demonstrate partner relationship by providing copies of correspondence or other materials as appendices to proposals.

The partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating and other local currency costs and to assist with the organization of projects.

Materials Development

USIA encourages the development, where needed, of written, audio and video materials in the local language to enhance the training programs. For example, if not already available, glossaries of specialized terms in community action work or development of not-for-profit, citizen-based organizations might be developed.

Scope

Proposals should limit their focus to citizen-based action groups. Proposals for programs that are broader in scope will be eligible, but are less likely to receive USIA support. USIA encourages proposals that feature "train the trainers" models; the creation of indigenous training centers; schemes to create professional networks or professional associations to disseminate information; and other enduring aspects.

Participant Selection

All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Programs in support of internships in the U.S. must include letters tentatively committing host institutions to support the internships. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution.

Guidelines and Restrictions

USIA does not support proposals limited to conferences or seminars of only a few days length which are organized as plenary sessions, major speakers, and panels with a passive audience. It will support conferences only insofar as they are a minor part of a larger project in duration and scope which is receiving USIA funding from this competition. Furthermore, grants are not given to support projects whose focus is limited to technical issues, or for research projects, for publications intended for dissemination in the United States, for individual student exchanges, for film festivals or exhibits. Nor does this Office provide scholarships or other support for long-term (i.e., a semester or more) academic studies. Proposals that request support for the development of university curriculums or for degree-based programs will not be eligible under this RFP.

Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted under this RFP.

Competitions sponsored by other offices of USIA's Bureau of Educational and Cultural Affairs are also announced in the **Federal Register**, and may have different guidelines or restrictions.

Funding

The amount requested from USIA should not exceed $125,000. However, exchange organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they may also include separate sub-budgets for each program component, phase, location or activity. Competition for USIA funding support is keen. Please note: All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published federal per diem rates must be used.

Note: Grantee staff must use the published federal per diem rates, not the flat rate.

3. Interpreters: Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each DOS interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; this includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. *Audit Requirements:* The proposal shall include the cost of an audit that:

a. Complies with the requirements of OMB circular No. 1–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

b. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

c. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

a. Preparation of basic financial statements, and other accounting services; and

b. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

11. Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching" and should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of East Asian and Pacific Affairs.

Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant

awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds. The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of program idea:* Proposals should exhibit relevance, originality, rigor and substance to USIA's mission. They should demonstrate the match of U.S. resources to a clearly defined need.

2. *Institutional ability/capacity/record:* Applicant institutions should demonstrate their potential from program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by the Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program planning:* A detailed work plan should provide milestones for the accomplishment of each phase of the project and clearly demonstrate how the grantee institution will meet milestones. In addition, the work plan should indicate how the work plan will accomplish the overall project goals.

5. *Thematic expertise:* Proposal should demonstrate the organization's expertise in the subject area.

6. *Cross-cultural expertise and area expertise:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of target area/country.

7. *Multiplier effect/follow-on activities:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties. Proposals should also reflect an institutional commitment for continued exchange activity beyond the term of the USIA grant.

8. *Cost-effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

10. *Project evaluation:* Proposals should include a plan to evaluate the activity's success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology that will be used to link outcomes to original project objectives. Applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review process on or about June 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 14, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–1680 Filed 1–26–94; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Thai Local Government Project

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

TITLE: Thai Local Government Project.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop programs in the area of local government/public administration. The project should link the U.S. organization's international exchange interests with counterpart institutions or groups in Thailand.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the Thai Local Government Project. This announcement number is *E/P–94–18.* Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on March 11, 1994. Faxed documents will not be accepted, nor will documents postmarked March 11, 1994, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The grant project activity should begin after June 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: Thai Local Government Project (E/P–94–18), Grants Management Division (E/XE), 301 Fourth Street SW—room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, institutions should contact: Elroy Carlson, American Republics and East Asia and Pacific Division, Office of Citizen Exchanges (E/P), room 216, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547, telephone 202/619–5326, fax 202/260–0437, to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of the Thai Local Government Project

Overview

The newly elected government of Thailand has committed itself to improving the process of government. One aspect of this commitment is an effort to decentralize aspects of the

political process. USIA is interested in proposals for programs that will foster effective administration of local and regional governments. Programs might examine and seek to improve relationships among local executive, legislative, and judicial elements, or they might address the knowledge and skills necessary to administer one or more of these branches of local government.

Program topics might include one or more of the following: judicial administration, budget development, financial management, tax policies and mechanisms, election practices, management of municipal services, privatization of government property, consumer protection, business regulation (as opposed to control), licensing, or environmental protection. Programs might further the development of information and library systems relevant to local government, improve committee and staff structures, research capability, legislation drafting capability, or structural and procedural needs of local governments. Programs should be conducted mostly in local centers, preferably situated outside the capital city. Projects should lay the groundwork for new and continuing links between American and Thai professional organizations.

Projects may include: Study tours in the U.S. for small groups; short-term non-technical workshops conducted in Thailand; four- to ten-week internships in the U.S.; planning trips or consultations in Thailand; and the development of specialized training materials.

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

All proposals should demonstrate:

(1) In-depth, substantive knowledge of the relevant issues;

(2) Established connections with partner institutions;

(3) The capacity to organize and conduct the program, including appropriate orientation activities for the participants; detailed work plan for all phases of the project; tentative agendas for study tours, workshops, and internships; letters of commitment from internship hosts; and selection procedures.

USIS post consultation by applicants, prior to submission of proposals, is recommended. Address inquiries to Assistant Cultural Affairs Officer, AmEmbassy (USIS) Bangkok, Box 48, APO AP 96546–0001, Telephone 66–2–286–0900; Fax 66–2–287–2102.

USIA will give priority to proposals from U.S. organizations that have partner organizations in Thailand or Southeast Asia, which will assist logistically and will contribute to the realization of program goals and objectives and will themselves be enhanced by the program. Applicants are encouraged to demonstrate partner relationships by providing copies of correspondence or other materials as appendices to proposals.

The partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating and other local currency costs and to assist with the organization of projects.

Materials Development

USIA encourages the development, where needed, of written, audio and video materials in the local language to enhance the programs. For example, if not already available, glossaries of specialized terms in local government or public administration might be developed.

Scope

Proposals should limit their focus to local governance. Proposals for programs that are broader in scope will be eligible, but are less likely to receive USIA support. USIA encourages proposals that feature "train the trainers" models; the creation of indigenous training centers; schemes to create professional networks or professional associations to disseminate information; and other enduring aspects.

Participant Selection

All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Programs in support of internships in the U.S. must include letters tentatively committing host institutions to support the internships. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution.

Guidelines and Restrictions

USIA does not support proposals limited to conferences or seminars of only a few days length which are organized as plenary sessions, major speakers, and panels with a passive audience. It will support conferences only insofar as they are a minor part of a larger project in duration and scope which is receiving USIA funding from this competition. Furthermore, grants are not given to support projects whose focus is limited to technical issues, or for research projects, for publications intended for dissemination in the United States, for individual student exchanges, for film festivals or exhibits. Nor does this Office provide scholarships or other support for long-term (i.e., a semester or more) academic studies. Proposals that request support for the development of university curriculums or for degree-based programs will not be eligible under this RFP.

Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted under this RFP.

Competitions sponsored by other offices of USIA's Bureau of Educational and Cultural Affairs are also announced in the **Federal Register**, and may have different guidelines or restrictions.

Funding

The amount requested from USIA should not exceed $125,000. However, exchange organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they may also include separate sub-budgets for each program component, phase, location or activity. Competition for USIA funding support is keen. Please note: All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published federal per diem rates must be used.

Note: Grantee staff must use the published federal per diem rates, not the flat rate.

3. Interpreters: Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need

interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each DOS interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; this includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Audit Requirements: The proposal shall include the cost of an audit that:

a. Complies with the requirements of OMB Circular No. 1–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

b. Complies with the requirements of the American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

c. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

a. Preparation of basic financial statements, and other accounting services; and

b. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

11. Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular No. A–110, Attachment E, "Cost-sharing and Matching" and should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of East Asian and Pacific Affairs.

Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds. The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of program idea:* Proposals should exhibit relevance, originality, rigor and substance to USIA's mission. They should demonstrate the match of U.S. resources to a clearly defined need.

2. *Institutional ability/capacity/record:* Applicant institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by the Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program planning:* A detailed work plan should provide milestones for the accomplishment of each phase of the project and clearly demonstrate how the grantee institution will meet milestones. In addition, the work plan should indicate how the work plan will accomplish the overall project goals.

5. *Thematic expertise:* Proposals should demonstrate the organization's expertise in the subject area.

6. *Cross-cultural expertise and Area Expertise:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of target area/country.

7. *Multiplier effect/follow-on activities:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties. Proposals should also reflect an institutional commitment for continued exchange activity beyond the term of the USIA grant.

8. *Cost-effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

10. *Project evaluation:* Proposals should include a plan to evaluate the activity's success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology that will be used to link outcomes to original project objectives. Applicants will be expected to submit

intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review process on or about June 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 14, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–1681 Filed 1–26–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 18
Thursday, January 27, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 25, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–1891 Filed 1–25–94; 1:05 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 18, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–1892 Filed 1–25–94; 1:05 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 11, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–1893 Filed 1–25–94; 1:05 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 4, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–1894 Filed 1–25–94; 1:05 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 1, 1994 at 10:00 am.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, February 3, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1993–24: Richard E. Gardiner, Legislative Counsel for National Rifle Association
Administration Matters

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–1969 Filed 1–25–94; 3:14 pm]

BILLING CODE 6715–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will hold its Annual meeting on January 28–29, 1994. The meeting will commence at 1:00 p.m.

PLACE:

January 28, 1994

The Legal Services Corporation, 750 First Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800

January 29, 1994

Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., The William Penn Room, Washington, D.C. 20037, (202) 955–6400

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold executive sessions on January 28th and January 29, 1994. At the closed session on January 28, 1994, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on January 8, 1994. The Board will hear, consider and act on the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. At the closed session on January 29, 1994, the Board will consider prospective candidates for the position of President of the Corporation. The closings will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) (5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a), (d) (e), (f), and (h)].[2] The closings will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

January 28, 1994

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of January 8, 1994 Meeting
3. Election of Board Chairperson
4. Election of Board Vice Chairperson

[2] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

5. Consider and Act on the Composition of Board Committees Pursuant to 45 C.F.R. Sections 1601.27 and 1601.28
a. Standing Committees—
—Audit & Appropriations Committee;
—Operations & Regulations Committee;
—Provision for the Delivery of Legal Services Committee.
B. Temporary/Special Committees—
—Presidential Search Committee;
—Office of the Inspector General Oversight Committee;
—Other.
6. Chairman's and Members' Reports
7. Consider and Act on Operations and Regulations Committee Report
8. Consider and Act on Provision for the Delivery of Legal Services Committee Report

OPEN SESSION: (Continued)

9. Consider and Act on Audit and Appropriations Committee Report
a. Consider and Act on Proposed Fiscal Year 1994 Consolidated Operating Budget for the Corporation
b. Consider and Act on Proposed Fiscal Year 1995 Consolidated Operating Budget for the Corporation
10. Consider and Act on Presidential Search Committee Report
11. President's Report
12. Inspector General's Report

CLOSED SESSION:

13. Approval of Minutes of Executive Session Held on January 8, 1994
14. Consultation by Board with the President on Internal Personnel and Operational Matters
15. Consider and Act on Internal Personnel and Operational Matters
16. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters
17. Consider and Act on the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party

OPEN SESSION: (Resumed)

18. Public Comment
19. Consider and Act on Motion to Close Meeting of Board on January 29, 1994

January 29, 1994 Meeting

MATTERS TO BE CONSIDERED:

CLOSED SESSION:

1. Consider, With Advisory Committee, Prospective Candidates for the Position of President of the Corporation

OPEN SESSION:

2. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 25, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–1895 Filed 1–25–94; 2:06 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on January 28, 1994. The meeting will commence at 5:00 p.m.

PLACE: The Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, consider prospective candidates for the position of President of the Corporation. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a) and (e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

January 28, 1994 Meeting

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of January 7, 1994 Meeting
3. Consider and Act on Search Procedure issues

CLOSED SESSION:

4. Approval of Minutes of January 7, 1994 Executive Session
5. Consider, With Advisory Committee, Candidates for the Position of President of the Corporation

OPEN SESSION:

6. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 25, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–1896 Filed 1–25–94; 2:05 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on January 27, 1994. The meeting will commence at 1:30 p.m. It is anticipated the substantive, open portion of the meeting (i.e., deliberation of agenda item number 5) will commence at approximately 2:30 p.m.

PLACE: The Legal Services Corporation, 750 First Street, N.E., The Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2), (6) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a), (e), and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda

CLOSED SESSION:

2. Approval of Minutes of January 7, 1994 Executive Session
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party
4. Consider and Act on Internal Personnel and Operational Matters

OPEN SESSION: (Resumed)

5. Approval of Minutes of January 7, 1994 Meeting
6. Develop, Consider and Act on Plans Related to Reauthorization of the Corporation
7. Consider and Act on Status Report on the Regulation Reform Effort
   a. Consider and Act on Report on Priority Development of Regulations under Consideration by the Regulations Working Group

OPEN SESSION: (Continued)

8. President's Report
9. General Counsel's Report
10. Office of Administration Director's Report
11. Office of Human Resources/Equal Opportunity Director's Report

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 25, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–1897 Filed 1–25–94; 2:05 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on January 27, 1994. The meeting will commence at 10:00 a.m.

PLACE: The Legal Services Corporation, 750 First Street, NE., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of January 6–7, 1994 Meeting
3. Presentation of Report By Grant/Thornton Regarding the Corporation's Fiscal Year 1993 Financial Audit
4. Consider and Act on Proposed Fiscal Year 1994 Consolidated Operating Budget for the Corporation
5. Consider and Act on Staff Recommendations on Fiscal Year 1995 Consolidated Operating Budget for the Corporation

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 25, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–1898 Filed 1–25–94; 2:06 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on January 28, 1994. The meeting will commence at 9:00 a.m. and is open to the public.

PLACE: The Legal Services Corporation, 750 First Street, NE., The Board Room, 11th Floor, Washington, D.C. 20002, (202) 336-8800.

STATUS OF MEETING: *Open.*

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes of December 4, 1993 Meeting
3. Report from the Director of the Offices of Program Services, and Program Evaluation, Analysis and Review, Regarding Implementation of the Principles Adopted by the Board for Evaluation, Technical Assistance, Monitoring and Complaint Investigation, Said Principles Having Been Adopted on December 5, 1993
4. Discussion of Issues Related to Program Improvement and Report on Current Planning Processes Underway in the Legal Services Community
5. Consider and Act on Options Available to the Corporation for Funding Law School Clinical Programs
6. Report and Presentation with Regard to the National and Community Service Trust Act
7. Consideration of Various Initiatives Related to the Delivery of Legal Services, As Follows
   a. Alternative Dispute Resolution;
   b. Attorney Recruitment;
   c. Reginald Heber Smith Fellowship Program;
   d. Loan Forgiveness; and
   e. Others.

CONTACT PERSON: Patricia Batie, (202) 336–8800.

Date Issued: January 25, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–1899 Filed 1–25–94; 2:06 pm]

BILLING CODE 7050–01–M

Corrections

Federal Register
Vol. 59, No. 18
Thursday, January 27, 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 COMMERCE

National Institute of Standards and Technology

[Docket No. 931218-3318]

Opportunity To Join a Cooperative Research and Development Consortium To Develop Virtual Library and Document Interchange Technology

Correction

In notice document 94-70 beginning on page 294 in the issue of Tuesday, January 4, 1994, make the following correction:

On the same page, in the third column, under **DATES:**, the fifth through sixth lines should read "March 7, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 92081-3194]

RIN 0693-AB09

Revision of Federal Information Processing Standard (FIPS) 46-1 Data Encryption Standard (DES)

Correction

In notice document 93-31909 beginning on page 69347 in the issue of Thursday, December 30, 1993 make the following correction:

On page 69348, in the second column, in the last paragraph, in the first line, "removed" should read "recovered".

BILLING CODE 1505-01-D

federal register

Thursday
January 27, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Special Federal Aviation Regulations No. 36, Development of Major Repair Data; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 127, 135, and 145

[Docket No. 17551; SFAR Amendment No. 36–6]

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends and extends Special Federal Aviation Regulation (SFAR) No. 36, which provides that authorized repair station and aircraft operating certificate holders may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been approved by the Federal Aviation Administration (FAA). Amendments include clarification of the scope of the SFAR authorization. Extension of the regulation continues to provide, for those that qualify, an alternative from the requirement to obtain FAA approval of major repair data on a case-by-case basis, and allows additional time for the FAA to incorporate the SFAR provisions into the regulations.

DATES: Effective January 23, 1994 and terminates January 23, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Continued Airworthiness Staff, Aircraft Engineering Division, AIR–107, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–7218.

SUPPLEMENTARY INFORMATION:

Background

Notice No. 93–15, Special Federal Aviation Regulation No. 36, Development of Major Repair Data, was published in the **Federal Register** on Thursday, October 21, 1993; the comment period closed on November 22, 1993. Ten comments were received and are addressed below in the section entitled Discussion of Comments.

In the NPRM, the FAA proposed amending and extending the termination date of Special Federal Aviation Regulation (SFAR) No. 36, which allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after accomplishing major repairs using data developed by the holder that have not been approved by the FAA. Currently, more than 40 air carrier and domestic repair station certificate holders currently have SFAR 36 authorizations that will terminate on January 23, 1994.

Since the SFAR was initially adopted in 1978, some of the regulatory language has received differing field interpretation. As a result, some repaired products have been returned to service by SFAR 36 authorization holders that did not have return to service authority. These interpretations are the result of changes in the repair industry since the initial adoption of the rule. The original SFAR 36 did not foresee that some repair stations would be authorized only to perform maintenance on parts or components of articles without authorization to return them to service. These interpretations of eligibility have allowed several SFAR 36 authorizations to be issued and used inconsistently with the original intent of the SFAR.

An aircraft "product" is an aircraft, airframe, aircraft engine, propeller, or appliance. An aircraft "article" is an airframe, powerplant, propeller, instrument, radio, or accessory. Although some repair stations are authorized only to perform maintenance on parts of articles or products, some SFAR 36 authorizations were used by these repair station certificate holders to approve the articles and products for return to service.

The FAA has found that while repair stations that specialize in the repair of parts or components of aircraft articles or products may have the technical capability and scope sufficient for the individual repair, they do not necessarily possess the overall knowledge necessary for returning an article or product to service. Only repair stations and air carriers that understand the form, fit, and function of an aircraft article or product should be authorized to approve that article or product for return to service after a major repair. Furthermore, one must understand the form, fit, and function of the article or product in order to fully evaluate the ramifications of a major repair being developed for that article or product. When the FAA finds that a repair station or air carrier has that necessary understanding, the FAA issues it a certificate and operations specifications commensurate with that finding, and the repair station or air carrier is granted return to service authority. This higher level of certitude by the FAA in the work and knowledge of the repair station or carrier that is authorized to approve the rated article or product for return to service is the basis for the SFAR 36 authorization to develop and use data for major repairs without FAA approval of the data. The preamble to the original SFAR 36 reflected this intent to limit the authorization to these repair stations and carriers when it discussed the need to have damaged aircraft repaired and returned to service as quickly as possible. The SFAR 36 system was never intended to support repairs accomplished further up in the repair stream.

History

Prior to the adoption of SFAR 36, certificate holders that were qualified to make repairs were required to obtain FAA approval on a case-by-case basis for data they had developed to perform major repairs. The only alternative to the time-consuming, case-by-case approval method was to petition for and obtain an exemption granting relief from the regulation. The number of exemptions being granted indicated that revisions to the Federal Aviation Regulations (FAR) were necessary, and SFAR 36 was adopted on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR eliminated the requirement for authorized certificate holders to petition for exemption from the regulation, and allowed the FAA additional time to obtain the information necessary to develop a permanent rule change. Most of the affected certificate holders, however, did not use the provisions of SFAR 36 until it was well into its second year and nearing its expiration date of January 23, 1980. Since the FAA did not yet have sufficient data upon which to base a permanent rule change, the termination data for SFAR 36 was extended to January 23, 1982.

Although the FAA has considered consolidating certain authorizations along with those issued under SFAR 36 to make them permanent parts of the regulations, no rulemaking action has been undertaken, and SFAR 36 has been extended three times. Currently, permanent regulatory action is under consideration by the Aviation Rulemaking Advisory Committee (ARAC).

Synopsis of the Rule

Section 1

The FAA defines aircraft "product," "article," and "component" for the purpose of the SFAR. The definitions explain more clearly an authorization holder's return to service authority.

Section 2

The FAA restates the general provisions of the current SFAR in terms applicable to the individual types of eligible certificate holders. Paragraph (c) of section 2 clarifies that an SFAR 36 authorization does not expand the scope of authority of a repair station certificate holder; i.e., it does not give a repair station return to service authority for any article for which it is not rated or change the articles it is rated to repair.

Section 3

Section 3 states that an authorized certificate holder may approve an aircraft product or article for return to service after accomplishing a major repair, using data not approved by the Administrator, only in accordance with the amended SFAR. Section 3 requires that the data used to perform the major repair be developed and "approved" in accordance with the holder's authorization and procedures manual. Section 3 also enables an authorization holder to use its developed repair data on a subsequent repair of the same type of product or article. For each subsequent repair, the holder must determine that accomplishment of the repair, using previously developed data, will return the product or article to its original or properly altered condition and will conform to all applicable airworthiness requirements. In addition, each subsequent use of the data would have to be recorded in the authorization holder's SFAR records.

Section 4

Section 4 describes the procedures for applying for an SFAR 36 authorization.

Section 5

Section 5 identifies the requirements a certificate holder must meet to be eligible for an SFAR 36 authorization. Paragraphs (a)(2), (a)(3), and (b) define the personnel required and incorporate clarifying changes from the current SFAR. Paragraph (c) contains the reporting requirement of the current SFAR that pertains to changes that could affect the holder's continuing ability to meet the SFAR requirements.

Section 6

Section 6 describes the procedures manual requirements. Paragraph (c) of section 6 requires that an authorization holder that experiences a change in procedures or staff obtain and record FAA approval of the change in order to continue to approve products or articles for return to service.

Section 7

Section 7 states that SFAR 36 terminates on January 23, 1999. All authorizations issued under this SFAR will terminate on that date unless earlier surrendered, suspended, revoked, or otherwise terminated. Section 7 also allows previous authorization holders to either surrender their SFAR 36-developed data to the FAA or to maintain the data indefinitely and make it available to the FAA for inspection.

Section 8

Section 8 prohibits the transfer of an SFAR 36 authorization.

Section 9

Section 9 contains the inspection provisions of the current SFAR. It also emphasizes that the FAA must be able to determine whether an applicant has, or a holder maintains, personnel adequate to comply with the provisions of the SFAR and any additional limitations contained in the authorization.

Section 10

Section 10 re-emphasizes that an SFAR 36 authorization does not expand the scope of products or articles that an aircraft operator or repair station is authorized to approve for return to service. This section also emphasizes that the authorization allows a holder to approve for return to service a product or article after major repair performed by the holder using data developed by the holder without FAA approval of that data.

Section 11

Section 11 contains the provision that each SFAR 36 authorization holder must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.

Sections 12 and 13

Sections 12 and 13 address data review and service experience requirements and record keeping requirements. Section 12 states the circumstances in which a holder will be required to submit the information necessary for corrective action on a repair. Paragraph (b) of section 13 lists the identification information required rather than use the term "FAA identification," which has been the source of confusion in previous versions of the regulation.

As noted above, the termination date for SFAR 36 is January 23, 1999. The 5-year extension was chosen to allow enough time for the ARAC to deliberate and forward a recommendation, and enough time for the FAA to deliberate and act upon it. On or about the effective date of this final rule, each FAA office having jurisdiction over a current SFAR 36 authorization will reevaluate each holder in terms of the amended rule. All current holders will be notified in writing as to whether they continue to qualify under the amended rule.

The FAA will work with those holders that no longer qualify to establish, where possible, means to perform approved major repairs. The means may include submitting repair data to an aircraft certification office (ACO) for approval, utilizing a consultant designated engineering representative (DER) to approve the data, or employing a company DER.

The extension of SFAR 36 will allow uninterrupted major repair activity by the current authorization holders that qualify under the amended SFAR; those authorizations will be extended without the holders reapplying for authorization. The extension will also allow a new, qualified applicant to obtain an authorization instead of petitioning for exemption from the regulations.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rulemaking by submitting written comments to the public regulatory docket on or before November 22, 1993. All comments received have been reviewed and duly considered in promulgating this final rule; comments received after November 22, 1993, have been considered to the extent possible without delaying this rulemaking action. Ten comments were received; two from foreign aviation industry companies, three from domestic aviation industry companies, and five from domestic aviation industry associations. One of the foreign commenters only requests a copy of the NPRM and does not offer substantive comments. Of the remaining nine comments, one opposes the NPRM and four support it. The other four commenters do not declare agreement or opposition to the NPRM, but submit comments and suggestions.

Four commenters state that a repair station that has the authority to return to service a product or article should be able to develop and use major repair data for components or parts of those products and articles and return them to service as well. One of these commenters suggested that the FAA meant to imply that air carriers and repair stations that accomplish major repairs on products or articles are not qualified to accomplish major repairs on

parts or components of those products or articles. The FAA agrees that repair stations with the authority to return to service a product or article are qualified and must be able to develop and use major repair data to perform repairs on components or parts of those products or articles. The FAA disagrees, however, that the repair station should automatically be permitted to return to service those components or parts, unless the components or parts are reinserted into the original product or article before leaving the repair station. This SFAR addresses the development of major repair data; the issues concerning accomplishing the repair and return to service authority for repair stations for components or parts is beyond the scope of this rulemaking, and no changes are made to the NPRM pursuant to these comments.

Two commenters suggest that the final rule should allow current holders of the SFAR 36 authorization to continue to use the authorization for the term of the extension, or until a permanent rule is in place. One of these commenters read the NPRM to mean that repair stations currently conducting work under SFAR 36 must discontinue such work. The FAA disagrees; the rule does not require that work be discontinued, but rather that the repair station performing the work be truly qualified before returning an article to service. As was stated in the NPRM, some SFAR 36 authorizations were issued in error, due to misinterpretations of the rule. The FAA has determined that the error must not continue and those authorizations issued in error can not be extended without the authorization holders meeting all qualifications. The rule language proposed in the NPRM is retained to clarify the qualifications.

One commenter is concerned that its current authorization may lapse on the termination date of January 23, 1994. To ensure a smooth transition, current SFAR 36 authorization holders will be permitted to use their authorizations until the FAA notifies them that they do not continue to qualify to hold the authorization.

One commenter proposes that the rule include a system of positive identification on the restored product with traceability directly back to the facility performing the major repair and to the specific data package authorizing the major repair. The FAA agrees that this issue has merit; however, such a requirement would add a substantial burden not proposed in the NPRM. The suggestion is beyond the scope of this rulemaking. Future documents such as Advisory Circulars, FAA Orders, or other rulemaking projects, including those developed in the ARAC, may consider this suggestion, if applicable.

One commenter suggests allowing foreign repair stations to use SFAR 36 authorizations to develop and use major repair data. The FAA disagrees; SFAR 36 has never been available to foreign repair stations. The resources and database systems currently available to oversee foreign operations are not sufficient to adequately monitor such SFAR 36 authorizations. The rule will not be expanded to include foreign repair stations.

One commenter suggests that the current SFAR 36 does not need clarification, but rather §§ 145.51(b) and 145.53 of the Federal Aviation Regulations, which address return to service authority and maintenance of rated items, need to be enforced. The FAA disagrees; the erroneous issuance of SFAR 36 authorizations demonstrates that ambiguity exists in the current rule. The rule sections cited by the commenter are not at issue in improper SFAR 36 authorizations. Increased enforcement of other regulations would not change the ambiguity that exists in SFAR 36.

One commenter suggests that the three subsections of section 2 of the rule be considered into one paragraph, along with other minor revisions. The FAA realizes that some of the material in these subsections is repeated, but the subsections do refer to different sections of the regulations. Part of the confusion with the current SFAR stems from the very combinations of information suggested by the commenter. Section 2 was divided into three sections in order to clarify what is available to different applicants.

One commenter suggests that section 6 of the NPRM be amended to add that the Administrator must approve within 15 days a change in repair station staff necessary to meet other requirements of the regulation or a change in procedures approved under a separate paragraph of the regulation. The FAA disagrees; often, more than 15 days is needed to conduct research necessary to verify a new staff member's background and ability or to evaluate procedures. The FAA can not grant approval to necessary staff personnel or procedures without thoroughly investigating all issues involved to ensure that the level of safety intended by the rule continues to be met. No time limit for FAA approval will be added to Section 6.

One commenter states that the qualifications of the SFAR 36 staff engineering personnel should be consistent with qualifications assigned to Designated Engineering Representatives with regard to damage tolerance requirements. The FAA agrees; this issue is addressed in Section 5(a)(3), which identifies engineering personnel that can determine compliance with the applicable airworthiness requirements of the regulations. Therefore, no change is made to the final rule.

Two commenters propose that section 5 of the SFAR be amended to state that the applicant must have authority to repair products or articles to be eligible to apply for an SFAR 36 authorization. The FAA agrees that this is a helpful clarification; the final rule incorporates this change.

One commenter proposes that the words "article" and "product" should both appear wherever one is currently used to encompass all items intended. The FAA agrees in part, and has further determined that the final rule should reflect one term where one most clearly states the applicability of the corresponding provision. For example, FAR Section 121.379(b) states that a certificate holder may approve for return to service a *product* after maintenance, etc., performed under paragraph (a) of Section 121.379. FAR Section 145.51b states that a repair station certificate holder may approve for return to service any *article* for which it is rated. Accordingly, the final rule has been revised to use "product" when referring to repairs performed by air carrier and air taxi certificate holders, and to use "article" when referring to repairs performed by repair station certificate holders; the final rule uses both terms where it does not distinguish between the certificate holders.

One commenter suggests that clarification is needed as to whether a repair station may continue to utilize major repair data developed previously under its SFAR 36 authorization if that authorization ceases, terminates, or expires. The FAA agrees that a clarification is needed. A holder whose authorization has expired or has been terminated may not use data previously developed under its authorization to perform a major repair and return the product or article to service; the relevant provisions of FAR parts 121, 127, and 145 cited in Section 2 of the proposed and final rule prohibit that return to service.

In addition, Section 7 of the final rule requires the holder to surrender its SFAR 36-developed data to the FAA. However, the FAA acknowledges that a holder whose authorization has expired or been terminated may have a legitimate future use for the data; e.g., the holder may apply to the FAA to

have the data approved. Accordingly, to accommodate the FAA's continued airworthiness concerns and a holder's interest in data it has developed, Section 7 of the final rule has been revised to allow a former authorization holder to surrender its SFAR 36-developed data, or maintain its data indefinitely and make the data available to the FAA for inspection.

Paperwork Reduction Act

Information collection requirements in SFAR 36–6 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned the OMB Control Number 2120–0507. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on the amendments to 14 CFR parts 121, 127, 135, and 145—Special Federal Aviation Regulation No. 36, Development of Major Repair Data. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector consumers, and Federal, State, and local governments.

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation in the docket for this final rule).

Cost Analysis

The FAA estimates that the one-time total cost of compliance will be approximately $55 for the industry and about $840 for the FAA. This cost estimate was derived based upon two components: (1) Current SFAR 36 certificate holders (that will not qualify under the amended rule) applying for a DER, and (2) FAA costs to review SFAR 36 and DER authorizations.

Benefit Analysis

The final rule, with the amended extension date, will allow certain firms to continue to operate under SFAR 36, and will avoid economic hardship to those relying on it as it presently exists. The final rule will also eliminate ambiguities that exist in the present rule. These ambiguities have allowed component repair stations that do not have return to service authorization to receive SFAR 36 authorizations. Repair stations that specialize in component or piece parts of products (instead of aircraft engines or air frames, for example) and are not returning those products to service, do not necessarily possess the overall knowledge necessary for returning an article or product to service. Only repair stations and air carriers that understand the form, fit, and function of an aircraft article or product should be authorized to approve that article or product for return to service after a major repair.

There have been no known documented instances where aviation safety has been compromised as a result of these repaired products being returned. Nevertheless, the level of certitude should not be compromised, and only those that understand the form, fit, and function of the product should be permitted to return the product to service.

The benefits of this action are the potential improvements in aviation safety.

Comparison of Costs and Benefits

The costs associated with this final rule ($55 to industry and $840 to the FAA) are minimal. In view of the negligible costs of the rule, coupled with benefits in the form of enhanced safety to all aircraft operators, the FAA has determined that the rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this final rule are below any threshold established by FAA Order 2100.143A. Therefore, the final rule will not have a significant economic impact on any small entity.

International Trade Impact Assessment

This final rule will have neither an effect on the sale of foreign aviation products or services in the United States, nor an effect on the sale of U.S. products or services in foreign countries since it does not impose costs on aircraft operators or U.S. or foreign aircraft manufacturers.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, nor 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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Justification for Immediate Adoption

The FAA has determined that delay in the adoption of this rule would cause undue burden to qualified domestic repair stations, air carriers, air taxi operators with large aircraft, and commercial operators of large aircraft. These companies use their SFAR 36 authorizations to develop and use data not formerly approved by the FAA for major repairs on products and articles. Current SFAR 36 authorizations will terminate on January 23, 1994, and this rule must be effective for the companies affected to continue to use data developed under the authorization to perform major repairs. Accordingly, the FAA has determined that good cause exists to make this rule effective in less than 30 days.

Conclusion

I certify that this final rule: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a significant rule under DOT Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 CFR 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. In addition, this final rule has little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects

14 CFR Part 121

Air carriers, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness, Aviation safety, Helicopters.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Helicopters, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121, 127, 135, and 145 as follows:

PART 121—[AMENDED]

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

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

PART 127—[AMENDED]

2. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430, 49 U.S.C. 106(g).

PART 135—[AMENDED]

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421–1431, and 1502; 49 U.S.C. 106(g).

PART 145—[AMENDED]

4. The authority citation for part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. app. 1354(a), 1355, 1421 and 1427; unless otherwise noted.

5. In parts 121, 127, 135, and 145, Special Federal Aviation Regulation No. 36, the text of which is found at the beginning of part 121, is revised to read as follows:

SFAR No. 36

1. *Definitions.* For purposes of this Special Federal Aviation Regulation—

(a) A product is an aircraft, airframe, aircraft engine, propeller, or appliance;

(b) An article is an airframe, powerplant, propeller, instrument, radio, or accessory; and

(c) A component is a part of a product or article.

2. *General.* (a) Contrary provisions of § 121.379(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate that operates large aircraft, that has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121, may perform a major repair on a product, as described in § 121.379(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(b) Contrary provisions of § 127.40(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating certificate that has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 127 may perform a major repair on a product as described in § 127.140(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(c) Contrary provisions of § 145.51 of the Federal Aviation Regulations notwithstanding, the holder of a domestic repair station certificate under 14 CFR part 145 may perform a major repair on an article for which it is rated, using technical data not approved by the Administrator, and approve that article for return to service, if authorized in accordance with this Special Federal Aviation Regulation. If the certificate holder holds a rating limited to a component of a product or article, the holder may not, by virtue of this Special Federal Aviation Regulation, approve that product or article for return to service.

3. *Major Repair Data and Return to Service.* (a) As referenced in section 2 of this Special Federal Aviation Regulation, a certificate holder may perform a major repair on a product or article using technical data that have not been approved by the Administrator, and approve that product or article for return to service, if the certificate holder—

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36, effective on January 23, 1994;

(2) Has developed the technical data in accordance with the procedures manual;

(3) Has developed the technical data specifically for the product or article being repaired; and

(4) Has accomplished the repair in accordance with the procedures manual and the procedures approved by the Administrator for the certificate.

(b) For purposes of this section, an authorization holder may develop technical data to perform a major repair on a product or article and use that data to repair a subsequent product or article of the same type as long as the holder—

(1) Evaluates each subsequent repair and the technical data to determine that performing the subsequent repair with the same data will return the product or article to its original or properly altered condition, and that the repaired product or article conforms with applicable airworthiness requirements; and

(2) Records each evaluation in the records referenced in paragraph (a) of section 13 of this Special Federal Aviation Regulation.

4. *Application.* The applicant for an authorization under this Special Federal Aviation Regulation must submit an application, in writing and signed by an officer of the applicant, to the FAA Flight Standards District Office charged with the overall inspection of the applicant's operations under its certificate. The application must contain—

(a) If the applicant is

(1) The holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate that operates large aircraft, the—

(i) The applicant's certificate number; and

(ii) The specific product(s) the applicant is authorized to maintain under its certificate, operations specifications, and maintenance manual; or

(2) The holder of a domestic repair station certificate—

(i) The applicant's certificate number;

(ii) A copy of the applicant's operations specifications; and

(iii) The specific article(s) for which the applicant is rated;

(b) The name, signature, and title of each person for whom authorization to approve, on behalf of the authorization holder, the use of technical data for major repairs is requested; and

(c) The qualifications of the applicant's staff that show compliance with section 5 of this Special Federal Aviation Regulation.

5. *Eligibility.* (a) To be eligible for an authorization under this Special Federal Aviation Regulation, the applicant, in addition to having the authority to repair products or articles must—

(1) Hold an air carrier, commercial, or air taxi operating certificate, and have been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121 or 127, or § 135.2, or hold a domestic repair station certificate under 14 CFR part 145;

(2) Have an adequate number of sufficiently trained personnel in the United States to develop data and repair the products that the applicant is authorized to maintain under its operating certificate or the articles for which it is rated under its domestic repair station certificate;

(3) Employ, or have available, a staff of engineering personnel that can determine compliance with the applicable airworthiness requirements of the Federal Aviation Regulations.

(b) At least one member of the staff required by paragraph (a)(3) of this section must—

(1) Have a thorough working knowledge of the applicable requirements of the Federal Aviation Regulations;

(2) Occupy a position on the applicant's staff that has the authority to establish a repair program that ensures that each repaired product or article meets the applicable requirements of the Federal Aviation Regulations;

(3) Have at least one year of satisfactory experience in processing engineering work, in direct contact with the FAA, for type certification or major repair projects; and

(4) Have at least eight years of aeronautical engineering experience (which may include the one year of experience in processing engineering work for type certification or major repair projects).

(c) The holder of an authorization issued under this Special Federal Aviation Regulation shall notify the Administrator within 48 hours of any change (including a change of personnel) that could affect the ability of the holder to meet the requirements of this Special Federal Aviation Regulation.

6. *Procedures Manual.* (a) A certificate holder may not approve a product or article

for return to service under section 2 of this Special Federal Aviation Regulation unless the holder——

(1) Has a procedures manual that has been approved by the Administrator as complying with paragraph (b) of this section; and

(2) Complies with the procedures contained in this procedures manual.

(b) The approved procedures manual must contain—

(1) The procedures for developing and determining the adequacy of technical data for major repairs;

(2) The identification (names, signatures, and responsibilities) of officials and of each staff member described in section 5 of this Special Federal Aviation Regulation who—

(i) Has the authority to make changes in procedures that require a revision to the procedures manual; and

(ii) Prepares or determines the adequacy of technical data, plans or conducts tests, and approves, on behalf of the authorization holder, test results; and

(3) A "log of revisions" page that identifies each revised item, page, and date of revision, and contains the signature of the person approving the change for the Administrator.

(c) The holder of an authorization issued under this Special Federal Aviation Regulation may not approve a product or article for return to service after a change in staff necessary to meet the requirements of section 5 of this regulation or a change in procedures from those approved under paragraph (a) of this section, unless that change has been approved by the FAA and entered in the procedures manual.

7. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 1999, unless it is earlier surrendered, suspended, revoked, or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

(a) Surrender to the FAA all data developed pursuant to Special Federal Aviation Regulation No. 36; or

(b) Maintain indefinitely all data developed pursuant to Special Federal Aviation Regulation No. 36, and make that data available to the FAA for inspection upon request.

8. *Transferability.* An authorization issued under this Special Federal Aviation Regulation is not transferable.

9. *Inspections.* Each holder of an authorization issued under this Special Federal Aviation Regulation and each applicant for an authorization must allow the Administrator to inspect its personnel, facilities, products and articles, and records upon request.

10. *Limits of Applicability.* An authorization issued under this Special Federal Aviation Regulation applies only to—

(a) A product that the air carrier, commercial, or air taxi operating certificate holder is authorized to maintain pursuant to its continuous airworthiness maintenance program or maintenance manual; or

(b) An article for which the domestic repair station certificate holder is rated. If the certificate holder is rated for a component of an article, the holder may not, in accordance with this Special Federal Aviation Regulation, approve that article for return to service.

11. *Additional Authorization Limitations.* Each hold of a authorization issued under this Special Federal Aviation Regulation must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.

12. *Data Review and Service Experience.* If the Administrator finds that a product or article has been approved for return to service after a major repair has been performed under this Special Federal Aviation Regulation, that the product or article may not conform to the applicable airworthiness requirements or that an unsafe feature or characteristic of the product or article may exist, and that the nonconformance or unsafe feature or characteristic may be attributed to the repair performed, the holder of the authorization, upon notification by the Administrator, shall—

(a) Investigate the matter;

(b) Report to the Administrator the results of the investigation and any action proposed or taken; and

(c) If notified that an unsafe condition exists, provide within the time period stated by the Administrator, the information necessary for the FAA to issue an airworthiness directive under part 39 of the Federal Aviation Regulations.

13. *Current Records.* Each holder of an authorization issued under this Special Federal Aviation Regulation shall maintain, at its facility, current records containing—

(a) For each product or article for which it has developed and used major repair data, a technical data file that includes all data and amendments thereto (including drawings, photographs, specifications, instructions, and reports) necessary to accomplish the major repair;

(b) A list of products or articles by make, model, manufacturer's serial number (including specific part numbers and serial numbers of components) and, if applicable, FAA Technical Standard Order (TSO) or Parts Manufacturer Approval (PMA) identification, that have been repaired under the authorization; and

(c) A file of information from all available sources on difficulties experienced with products and articles repaired under the authorization.

This Special Federal Aviation Regulation terminates January 23, 1999.

Issued in Washington, DC, on January 21, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–1646 Filed 1–21–94; 4:24 pm]

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January 27, 1994

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 20

Protecting Identities of Reporters of Adverse Events and Patients; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

21 CFR PART 20

[Docket No. 93N-0334]

Protecting the Identities of Reporters of Adverse Events and Patients; Preemption of Disclosure Rules

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its public information regulations to help ensure that the identities of those who report adverse events associated with human drugs, biologics, and medical devices, and the identities of patients are held in confidence and not disclosed by FDA, as provided in current agency rules, or by manufacturers that possess these reports. The proposed rule is intended to preempt the establishment or continuation in effect of any State or local law, rule, regulation, or other requirement that requires or permits disclosure of such identities. This action is being taken to maintain the agency's ability to collect information about safety risks of FDA-regulated products that is vital to protection of the public health.

DATES: Comments by March 28, 1994.

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: Ilisa B. G. Bernstein, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

A critical public health activity of FDA is to monitor the safety of human drugs, biologics, and devices in the marketplace. As part of postmarketing surveillance programs to monitor the safety of these products, FDA relies heavily on its adverse event reporting systems. These reporting systems are important adjuncts to the product approval process, which is based primarily on testing conducted before a product is marketed. Although preapproval testing provides significant information about the safety and efficacy of a product, not all potential safety problems can be identified in the preapproval stage when the number of subjects exposed to the product and the period of exposure are necessarily limited. For that reason, the receipt of postmarket reports of adverse events associated with a regulated product is critical to the agency's ability to help protect the public health.

Reporting by physicians and other health care professionals of adverse experiences associated with the administration of most products is strictly voluntary. As the agency's primary source of adverse event information, this voluntary reporting system has revealed significant adverse events and drug interactions associated with products that could not be identified during the preapproval testing. There are many instances of important public health actions that have been the direct or indirect result of information provided through voluntary reporting by individual health professionals. The removal of the antibiotic temafloxacin (Omniflox) from the market, research concerning the danger of concurrent use of the antihistamine terfenadine (Seldane) when taken with either the antifungal ketoconazole or the antibiotic erythromycin, and the warning labeling requirement for latex products are just a few examples that demonstrate why FDA strongly encourages voluntary reporting by physicians and other health professionals.

In a major effort to increase voluntary reporting of serious adverse events by health professionals, FDA recently announced a new reporting system called MEDWATCH. This program is designed to make it easier for health care providers to report serious adverse events and to clarify what type of information should be reported. The agency believes that preserving the confidentiality of the identities of the patient and of third parties involved with an adverse event report, such as the physician or others identified in the report, is essential to the success of the adverse event reporting system. Accordingly, although the substantive content of adverse event reports is public information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, FDA regulations have long protected the confidentiality of the patient, reporter, and institution involved in the adverse event (§ 20.111 (21 CFR 20.111)). These regulations, which have been in place since 1974, have enabled FDA to obtain voluntary reports of adverse events and to protect the confidentiality of information that could identify the patient involved.

Although these regulations protect the release of confidential information by FDA, they do not protect the release of the same information contained in reports held by drug, biologic, and device manufacturers. Various State and local governments have laws, regulations, or rules that permit disclosure of this information in litigation, through discovery or otherwise. Recently, plaintiffs in several product liability and medical malpractice cases have attempted to discover the identities of reporters and patients named in adverse event reports in the possession of the product manufacturers. As discussed above, this same information is protected from public disclosure when it is contained in similar or identical reports submitted to FDA and in FDA's possession. To avoid jeopardizing the willingness of the health care community to make reports of adverse events to manufacturers and FDA, the agency believes that a similar confidentiality rule is needed to prevent disclosure or threats of disclosure of the identity of reporters or subjects of adverse event reports in the possession of manufacturers.

To ensure meaningful reporting under the new MEDWATCH program, FDA believes that additional steps must be taken to safeguard the confidentiality of the identities of those involved with adverse event reports. State and local laws, regulations, or rules that permit or require the disclosure of patient and reporters' identities interfere with the agency's objective of ensuring the safety of human drugs, biologics, and devices. Therefore, FDA is proposing to amend its regulations to prohibit the disclosure of such information contained in reports held by FDA, as provided currently, and similar information held by manufacturers. The proposal also would preempt State and local laws, regulations, or rules that permit or require such disclosure. Disclosure would be permitted if both the reporter and the person identified in the report consent to disclosure or if there is a discovery order in malpractice litigation between the subject of the report and the reporter of the adverse event.

B. FDA Adverse Event Reporting Programs

1. Drug and Non-Vaccine Biological Products

FDA receives postmarketing adverse drug reaction (ADR) reports directly from manufacturers, health professionals, and consumers. An adverse drug or biologic experience means any adverse event associated

with the use of the product in humans, whether or not the event is considered related to the drug or biologic. Included are events that occur in the course of professional use, from drug overdose (whether intentional or accidental), from drug abuse, from drug withdrawal, and any failure of an expected pharmacological action (§ 314.80 (21 CFR 314.80(a)).

FDA regulations require drug manufacturers to report to FDA serious and unexpected adverse reactions and increased frequency of serious expected reactions. These reports must be filed within a specific time after the manufacturer receives the information. Manufacturers are also required to submit periodic reports of all adverse reactions (§ 314.80). FDA has proposed similar adverse experience reporting requirements for manufacturers of licensed biological products (March 29, 1990, 55 FR 11611) and expects to publish final regulations in the near future. The reporting of these adverse reactions by health professionals to either manufacturers or FDA, however, is strictly voluntary. (Health care providers are required to report certain adverse events associated with specific vaccines under the National Childhood Vaccine Injury Act. See section I.B.3 of this document.) The agency is also preparing a proposed rule to require adverse drug reaction reporting by manufacturers of nonprescription drug products.

In 1992, the agency received 105,945 ADR reports. The majority of the reports (88 percent) were sent by manufacturers, while the remaining 12 percent were sent directly to FDA by health professionals or consumers. Of all the ADR reports received by the agency, 22,704 were considered serious.

FDA believes that these figures represent only a fraction of the serious adverse events encountered by health care providers. A recent review article found that between 3 and 11 percent of hospital admissions could be attributed to adverse drug reactions (Ref. 1). Only about 1 percent of serious events are reported to FDA, according to one study (Ref. 2). Another study states that reporting rates in the United States are apparently lower than those in some other countries (Ref. 3). The majority of studies that have investigated the occurrence of adverse drug events in hospitalized patients estimate that from 10 to 20 percent of all patients will experience an adverse drug event while hospitalized (Ref. 4).

Upon receipt of the ADR report, the agency enters the information into its computerized data base of all ADR reports, the spontaneous reporting system (SRS). Every report of a serious adverse reaction is evaluated for its potential significance. The agency determines whether similar incidences were reported in the SRS, the temporal relationship between the administration of the drug and the reaction, possible confounding factors, and other information related to the adverse event. In many cases, follow-up information is requested from the reporter or the manufacturer. Because of resource constraints, the agency often relies on the manufacturer to screen the ADR reports and conduct any necessary follow-up by contacting the reporter. For this reason, similar or identical reports of adverse drug events will be in the possession of both FDA and individual drug manufacturers.

Information provided by voluntary reports from health professionals alerted FDA that the recently approved antibiotic temafloxacin (Omniflox) was associated with a serious type of anemia. Because of the severity of the risk associated with this drug, which became apparent only after the product was approved and used in larger numbers of patients, it was removed from the market. ADR reporting from health professionals also prompted FDA to undertake research that showed that a fatal reaction could occur when the antihistamine terfenadine (Seldane) is taken in combination with the antifungal ketoconazole (Nizoral) or with the antibiotic erythromycin. Drug interactions also reflect the fact that individual variability in drug metabolism can account for significant differences in patient response. Such response differences make well-designed postmarketing studies and health care provider observations and reports especially important. Other examples of FDA actions prompted by ADR reports include: The alert that serious liver damage may be associated with labetalol, a drug for high blood pressure; the recall of the nonnarcotic pain relieving drug zomepirac (Zomax), after reports that it may cause a severe allergic reaction that can result in death; the alert that the use of the antibiotics in the fluoroquinolone class and the anticoagulant warfarin may result in increased blood clotting time, which can lead to hemorrhage; and the recent boxed warning and alert to health professionals regarding the use of angiotensin converting enzyme (ACE) inhibitors during the second and third trimesters of pregnancy.

2. Devices

Postmarketing surveillance of the safety of devices depends on the success of both required and voluntary systems of reporting. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments) (21 U.S.C. 360i) and the Safe Medical Device Act of 1990 (Pub. L. 101–629) (the SMDA) (21 U.S.C. 360i(e)), and regulations thereunder, require manufacturers and distributors of devices to submit reports to FDA, within a specific timeframe, of deaths and serious injuries related to certain devices and of malfunctions. The SMDA also requires device user facilities, such as hospitals, nursing homes, and outpatient treatment centers, to report to FDA and the manufacturer, within a certain timeframe, information that reasonably suggests that a device has or may have caused a death. Device user facilities also are required to report to the manufacturer, or to FDA if the manufacturer is unknown, information that reasonably suggests that a device has caused, or may have caused, or may have contributed to a serious illness or serious injury.

Since 1973, the agency has maintained a voluntary device problem reporting program. Last year, about 4,500 reports were voluntarily submitted to this program, in addition to the statutorily required reports from manufacturers, distributors, and user facilities. Both the voluntary and the statutorily required reporting systems for devices, as with those for drugs, ultimately depend on the willingness of the individual health care professionals to submit reports.

In 1991, voluntary reporting led the agency to alert health professionals to a potentially fatal hypersensitivity to latex products. In addition, through the voluntary reporting system, FDA learned of increased numbers of deaths associated with physical patient restraints, often used by hospitals and nursing homes to restrain patients. Based on these reports and other information, FDA has restricted patient restraint devices to prescription use only and has taken steps to ensure proper labeling to prevent deaths and injuries. After receiving a report by a physician about two patients who experienced blindness after the physician's use of an ophthalmic device during eye surgery, FDA investigated the manufacturer and initiated a recall to remove these devices from the market.

In some areas, however, inadequate reporting has fostered delays in detecting problems. One example is silicone breast implants. Although these devices had been on the market for over 30 years, only in recent years had evidence begun to accumulate about

their possible association with autoimmune-like disorders. Had the agency received reports from health care providers when they initially observed these disorders in patients with breast implants, the agency could have assessed this possible association at an earlier date.

3. Vaccines

The National Childhood Vaccine Injury Act of 1986 (the NCVIA) requires health care providers who administer certain vaccines and manufacturers of those vaccines to report to the Government specified adverse events (42 U.S.C. 300aa-25). All reports are made to the Vaccine Adverse Event Reporting System (VAERS), which is maintained by FDA and the Centers for Disease Control and Prevention (CDC). FDA strongly encourages health care providers to report all suspected adverse events related to vaccines, in addition to those required to be reported by law, to VAERS. Reports submitted to VAERS are evaluated by FDA and CDC to identify vaccine-specific incidence and adverse event trends. For reports made pursuant to the NCVIA, the identity of the patient or the patient's legal representative cannot be made available to the public. However, for such reports, the identity of the health care provider is available to the public (42 U.S.C. 300aa-25(c)). For vaccine adverse event reports not submitted pursuant to the NCVIA, for example, for vaccines other than certain childhood vaccines, the identities of the patient, reporter, and institution involved are not disclosed to the public under FOIA.

4. The MEDWATCH Program

The goal of FDA's new MEDWATCH program is to underscore the important role of health care providers in identifying and reporting serious adverse events that may be related to FDA- regulated products. The program will make it easier for health care providers to report adverse events, clarify the type of reports that should be made, more widely disseminate information on FDA actions that have resulted from adverse event reporting, and increase physician awareness of drug- and device-induced disease.

Under the MEDWATCH program, several separate forms previously used to report adverse events and product problems with various products have been consolidated into a single, one page reporting form. Health professionals can use this form for reports on drug products, biological products, devices, and special nutritional products (dietary supplements, medical foods, and infant formula). The unified reporting form will be more readily available to providers in several publications and from a 24-hour, 7-days-a-week toll free number operated by FDA. There is also now a single receipt point for these reports; no longer will providers be expected to send different reports for medications and devices to different places in FDA. Health professionals can send the reports to the agency via facsimile or can report electronically by computer, responding to questions that appear on the monitor's screen. Health professionals can also send reports to manufacturers, who in turn will transmit them to FDA. Device manufacturers, user facilities, and distributors subject to mandatory reporting requirements will continue to submit their reports as specified in the applicable regulation.

The important message of the MEDWATCH program is that health professionals should report any event that is suspected to be related to an FDA-regulated product and is associated with a serious outcome such as death, a life-threatening condition, initial or prolonged hospitalization, disability, congenital anomaly, or an event that requires intervention to prevent permanent impairment or damage. The object is to capture as many reports of serious adverse events as possible in order to use that information to enhance the safety of FDA-regulated products. In general, the agency does not care whether the voluntary report goes directly to FDA or to the manufacturer—as long as the event is reported.

Many segments of the health care community have long supported agency efforts to increase voluntary reporting of adverse events by professionals. The practice standards for the American Society of Hospital Pharmacists contain a statement that "pharmacists in organized health-care settings should develop ongoing programs for monitoring and reporting ADRs" and should "[r]eport serious or unexpected ADRs to FDA" (Ref. 5). The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has standards for monitoring and reporting adverse medication and device events (Ref. 6). These standards require hospitals to report unexpected or significant adverse reactions promptly to FDA and to the manufacturer.

To further support FDA's voluntary MEDWATCH program, the American Medical Association's (AMA) Council on Ethical and Judicial Affairs recently released an opinion memorandum in 1993 that it is a physician's ethical responsibility and obligation to communicate any suspect occurrence of an adverse reaction to a drug or device to the medical community, including FDA.

II. The Problem—Confidentiality of Reporters' Identities

FDA believes that its success in encouraging health professionals to participate in the voluntary adverse event reporting system depends substantially on the guarantee of confidentiality given the identity of the reporter under FDA regulations (§§ 20.111(c)(3), 314.430(e)(4), 601.51(e)(3), and 803.9(b)). When FDA receives a request from the public for adverse reaction reports submitted voluntarily by health care professionals, consumers, patients, or manufacturers, FDA regulations require public disclosure of those reports only after deletion of the following: (1) The names and any information that would identify the person using the product, and (2) the names and any information that would identify any third party involved with the report, such as a physician, hospital, or other institution (§ 20.111).

The rationale for this policy was first articulated in the **Federal Register** of December 24, 1974, in the preamble to FDA's public information regulations. At that time, FDA determined that without a guarantee of confidentiality, "the possibility of persuading health professionals voluntarily to submit adverse reaction information is substantially diminished, and indeed perhaps wholly destroyed" (39 FR 44602 at 44616).

In the SMDA amendments, Congress provided some additional protection from involvement in private civil lawsuits to physicians who submit voluntary reports concerning adverse device events. Section 519(b)(3) of the act (21 U.S.C. 360i(b)(3)), added by the SMDA, provides that:

> [n]o report made under [the device user facility requirements] by a physician who is not required to make such a report, shall be admissible into evidence or otherwise used in any action involving private parties unless the facility, individual, or physician who made the report had knowledge of the falsity of the information contained in the report.

Congress enacted this provision to encourage private physicians to notify FDA or the manufacturer of device problems (H. Rept. 808, 101st Cong., 2d sess. 21 (1990)). This provision, however, may not be sufficient to prevent manufacturers from being compelled to release the reporters' or patients' identities pursuant to a discovery order.

The policy and program considerations underlying the need to protect patient and reporter

confidentiality have become even more compelling in recent years. The increase in product liability and medical malpractice litigation has heightened the reluctance of health professionals to report events observed by them if they are not given meaningful promises of confidentiality. In addition, the potential for discrimination connected with a diagnosis of human immunodeficiency virus (HIV)-positive status or acquired immunodeficiency syndrome (AIDS) has strengthened the commitment of health care professionals to protect patient privacy. As a direct reflection of FDA's longstanding regulations and commitment to this policy, the agency's MEDWATCH form (and its predecessors) expressly states that the information identifying the patient and reporter is held in confidence (see 58 FR 31611 through 31612, June 3, 1993).

However, in connection with FDA's current efforts to promote the MEDWATCH program and to increase reporting of serious adverse events, the health care community has voiced concerns about the agency's ability to safeguard confidentiality and protect the identities of the reporter and patient identified in the report, especially in situations where the report is in the possession of an individual manufacturer. Despite FDA's longstanding policy of keeping these identities confidential, the current concerns threaten to undermine the success of the voluntary reporting program.

FDA published its draft uniform MEDWATCH form for reporting suspect adverse events and product problems on February 26, 1993 (58 FR 11768). Subsequently, the agency received several comments about FDA's ability to maintain the confidentiality of patient and reporter identities: (1) When the report of an adverse event is made directly to the manufacturer or (2) when the manufacturer receives the information from FDA after a report is made to the agency.

The MEDWATCH form permits individuals reporting directly to the agency to indicate that they do not want their identity disclosed to the manufacturer. However, the agency encourages reporters to allow the agency to share the reporter's identity with the manufacturer in order to help FDA and the manufacturer conduct necessary followup. Currently, State and local laws govern disclosure of information from adverse event report forms that are in the possession of manufacturers, whether the reports come directly to the manufacturer from reporters or are relayed to manufacturers by FDA. Some State and local laws allow or require disclosure of identities of reporters and patients in adverse event reports.

FDA believes that if the identities of reporters or patients were made public or available to third parties, health care professionals would be much more reluctant to submit voluntary adverse event reports for fear of involving themselves and their patients in litigation. It is well recognized that many physicians are concerned about the potential for involvement in litigation by their patients or third parties. In a 1992 survey of physicians regarding adverse event reporting, over 37 percent of the respondents agreed with the statement that reporting increases the risk of becoming involved in litigation; 18 percent of the respondents listed fear of becoming involved in the administrative or legal process as an important reason for not reporting adverse reactions (Ref. 7). Several other surveys have been conducted which asked physicians what factors influenced their decision not to report an adverse event (Refs. 8, 9, and 10). Between 8 and 14 percent of the respondents in the studies stated that concern over legal liability was one reason why they did not report an adverse event. Moreover, if the reporter is a health care professional, particularly a physician, the reporter may fear that disclosure of his or her identity would increase the chances that a patient's identity would be discovered, thus risking a breach of the confidential physician-patient relationship.

In recent years FDA has learned of a number of product liability lawsuits in State courts in which manufacturers have been requested or ordered to provide the names of persons reporting adverse reactions to particular products. In some instances, the names of the affected patients have been requested. The manufacturers involved in these cases vigorously opposed discovery requests that sought the disclosure of patient and reporter identities. Occasionally, when the disclosure issue was being litigated, the manufacturers requested that FDA formally express its views on the disclosure of these identities and the effects such disclosure might have on the agency's postmarketing surveillance program.

FDA firmly believes that the success of its postmarketing surveillance efforts is dependent upon protecting the confidentiality of individuals involved in adverse experience reports. Thus, FDA took the unusual step of becoming involved in a number of these cases by filing, with the assistance of the Department of Justice, a statement of the Federal government's interest. The statement informed the courts of the potential damage the agency believes would be done to its postmarketing surveillance program and the public health if the identities of patients and reporters were released to plaintiffs in these cases. The agency believes that its efforts have contributed to continued protection of reporter and patient identities in all the cases in which FDA has participated.

III. The Need for Federal Regulation

FDA has determined that in order to help assure beneficial and consistent reporting of adverse events to the agency's MEDWATCH program, State and local rules that would permit or require disclosure of the identities of reporters and patients named in the reports must be clearly preempted by FDA's amended regulation.

Laws that permit disclosure of the identities of health professional reporters or patients identified in the reports directly interfere with FDA's ability to collect information required under sections 505(k) and 519 of the act (21 U.S.C. 355(k) and 360i). Section 505(k) requires manufacturers to submit information about approved drug products in order to enable FDA to monitor the safety of the product and "facilitate a determination" of whether the drug should be withdrawn from the market. This provision is implemented in § 314.80 (21 CFR 314.80) of the FDA regulations, which establishes mandatory reporting requirements of adverse reactions for manufacturers of drugs.

Section 519 of the act requires device manufacturers, distributors, importers, and user facilities to submit to FDA reports of certain adverse events to ensure the safety and effectiveness of devices. FDA has implemented this provision in regulations establishing mandatory reporting requirements for manufacturers, importers, and distributors (21 CFR part 803). FDA also has proposed regulations establishing reporting requirements for user facilities (see the **Federal Register** of November 26, 1991 (56 FR 60024)).

Under section 351 of the Public Health Service Act (42 U.S.C. 262(d)), biological products are licensed in accordance with regulations "designed to insure the continued safety, purity, and potency" of these products. Under FDA's implementing regulations, a biological product license may be revoked if the product does not conform to applicable standards or is not safe and effective (21 CFR 601.5(b)). The agency's proposed biologics adverse experience reporting regulations would

establish mandatory reporting requirements for manufacturers of most biological products (see the **Federal Register** of March 29, 1990 (55 FR 11611)).

Although these reporting requirements are or will be mandatory for manufacturers, device distributors, and device user facilities, these required reports ultimately rely upon voluntary reporting by health professionals. Manufacturers cannot report adverse events if they do not find out about them from the health professionals who observed or were advised of the events. As stated in section II. of this document, disclosure of patient or reporter identities serves as a significant disincentive for voluntary reporting by health professionals. Preempting State and local disclosure laws and rules that permit or require such disclosure would remove a significant impediment to FDA's ability to implement postmarketing surveillance programs that are essential to the public health.

Furthermore, sections 505(k) and 519 of the act provide that regulations and orders issued with respect to postmarketing reporting requirements "shall have due regard for the professional ethics of the medical profession and the interests of patients * * *" (21 U.S.C. 355(k) and 360i). The confidentiality of the physician-patient relationship is a basic tenet of medical ethics. The AMA Code of Ethics requires that, with certain limited exceptions, "(t)he utmost effort and care must be taken to protect the confidentiality of all medical records" ("1992 Code of Medical Ethics, Annotated Current Opinions," Section 5.07; and see the "1991 Standards of Clinical Nursing Practice of the American Nursing Association"). The recent AMA opinion that physicians have an ethical obligation to report adverse drug or device events is likely to be incorporated in medical practice if confidentiality can be ensured (Ref. 11).

FDA firmly believes that the public health interest in securing information from health professionals about potential hazards associated with marketed products far outweighs the interest an individual plaintiff may assert to obtain reporters' identities in private tort actions.

FDA recognizes the sophistication and complexity of private tort litigation in the United States and the proposed preemption action is not intended to frustrate or impede tort litigation in this area. Indeed, FDA recognizes that product liability plays an important role in consumer protection. The proposed regulation has been drafted to permit any individual plaintiff who experienced an adverse event and subsequently has become involved in medical malpractice litigation with the person who reported the event to obtain all the information contained in the adverse event report. In this situation, where both parties to the litigation know each other's identities, the interests of the parties in protecting this information is minimized and, therefore, would not impose a significant disincentive to reporting.

IV. Legal Authority for Federal Preemption

A. Principles of Preemption Law

Under the Supremacy Clause of the Constitution, State law may be preempted by Federal law in a number of ways (U.S. Const., Art. VI, cl. 2.). Congress may preempt State law by so stating in express terms (*Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977)). Section 521 of the act contains an express preemption provision applicable to devices. Under that section, no State may establish a requirement for a device "different from, or in addition to" any requirement applicable to the device under the act relating to safety or effectiveness or other matter included in an applicable requirement. (See 21 CFR part 808; *Commonwealth of Massachusetts* v. *Hayes*, 691 F.2d 57 (1st Cir. 1982)).

Even when Congress has not expressly preempted State law, congressional intent to preempt may be inferred in several ways. Preemption may be found "where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation" (*Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985), quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)), or where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject" (*Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); see *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)).

Another way the courts infer a congressional intent to preempt is by determining that State law actually conflicts with Federal law. The conflict may be demonstrated either when "compliance with both federal and state [law] is a physical impossibility" (*Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–43 (1963)), or when State law "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress" (*Hines* v. *Davidowitz*, 312 U.S. at 67). State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (See *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 477 (1984).)

In addition to the various ways in which preemption may result from congressional action or intent, "'a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law" (*City of New York* v. *FCC*, 486 U.S. 57, 63–64 (1988), (quoting *Louisiana Public Service Comm'n* v. *FCC*, 476 U.S. 355, 368–69 (1986))). Express congressional authorization for an agency to preempt State law is not needed and "federal regulations have no less preemptive effect than federal statutes." (*Fidelity Federal Savings and Loan Assn* v. *de la Cuesta*, 458 U.S. 141, 153, 154 (1982)).

When an agency's intent to preempt is clearly and unambiguously stated, the Court's inquiry will be whether the preemptive action is within the scope of that agency's delegated authority (*Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 700 (1984); *Fidelity Federal Savings*, 458 U.S. at 154). If the agency's choice to preempt "represents a reasonable accommodation of conflicting policies that were committed to the agency's care by statute [the regulation will stand unless] it appears from statute or its legislative history that the accommodation is not one that Congress would have sanctioned" (*United States* v. *Shimer*, 367 U.S. 374, 383 (1961)). In *Hillsborough County*, the Court stated that FDA possessed the authority to promulgate regulations preempting local laws that compromise the supply of plasma and could do so (*Hillsborough County*, 471 U.S. at 721). FDA believes it has similar authority to preempt local rules that compromise adverse reporting systems that are essential to postmarketing surveillance and protection of the public health.

B. Conflicts Between State Disclosure Laws and Federal Law

The conflicts between State and local disclosure laws and Federal law on reporting of adverse events justify FDA's preemption of these laws. Although Congress did not expressly preempt State law in this area, the agency's action is appropriate because State and local laws significantly interfere with the methods by which the Federal law is designed to achieve its goals.

FDA is the Government agency charged with protecting citizens by helping to ensure that medical products, including human drugs, biologics, and devices, are safe and effective for their intended uses. To further this purpose, Congress established elaborate mechanisms for the Federal government to permit marketing of new drugs, biologics, and devices and to monitor the safety of these products after approval (21 U.S.C. 355(k) and 360; 42 U.S.C. 262). Pursuant to these statutory provisions, FDA has established an extensive regulatory scheme to monitor the safety and effectiveness of new human drugs, biologics, and devices (§§ 310.305, 314.80, and §§ 803.1 through 803.36).

State and local rules of civil procedure, rules of evidence, and other laws and regulations that permit discovery of the reporters' and patients' identities are an obstacle to accomplishing this goal. Moreover, with respect to devices, such laws, regulations, and rules are different from the confidentiality requirements under the act and FDA regulations that implement adverse event reporting under section 519 of the act. Although reporter identities in voluntary adverse event reports contained in FDA records are not subject to discovery in State litigation, those reports that are in the possession of the manufacturer may be subject to State or local disclosure laws. The possibility of such disclosure will chill the willingness of reporters to share information with FDA, which may share details about a report with a manufacturer in order to investigate the report further. Preemption of State and local disclosure laws will remove an inhibiting influence on health professionals and will increase adverse event reporting. FDA has determined that such increased reporting outweighs the individual needs of plaintiffs to obtain information about the reporters and subjects of adverse reaction reports that are not about the plaintiff.

The proposed regulation is narrowly drawn and focuses solely on protecting the identity of the reporter and patient and other individuals identified in the report. This proposed rule does not preempt State and local laws that require disclosure of the substance of adverse event reports. The agency does not believe that disclosure of the substance of the adverse event reports will impede its ability to collect this information. Indeed, FDA routinely releases the full substance of all voluntary adverse event reports to requestors after deletion of patient, reporter, and institution identities (§ 20.111(c)(3)(iii)). Nor will the regulation impede the ability of an individual plaintiff to obtain specific information about reports concerning his or her own reaction to a product when that plaintiff is involved in a medical malpractice lawsuit and a court grants discovery of records directly concerning the plaintiff.

V. Summary of the Proposed Rule

FDA's rule to preempt State and local laws, rules, regulations or other requirements that would permit the disclosure of the identity of health care professionals who report adverse events associated with FDA regulated products and the identity of patients and other individuals named in those reports would be codified in newly proposed § 20.63(f).

Proposed § 20.63(f) would provide that the names and any identifying information, including the address of the reporter or the name or address of the institution, that would lead to the identification of the reporter or the persons named in a voluntary adverse event report, shall not be disclosed by either FDA or a manufacturer in possession of such report in response to any request.

Proposed § 20.63(f)(1) would provide exceptions to the prohibition of disclosing the names if both the reporter and the person identified in the adverse event report consent to disclosure of their identities, or if there is a court order in a medical malpractice action involving both the person named in the report and the reporter. Proposed § 20.63(f)(1)(iii) would permit disclosure of an adverse event report to the individual who is the subject of the report upon request.

Proposed § 20.63(f)(2) explicitly states that no State or local entity shall establish or continue in effect any law, rule, regulation or other requirement that permits or requires the disclosure of the identities of the reporter or person identified in an adverse event report except as provided in this rule.

VI. Executive Order 12612: Federalism

FDA has examined the effects of this proposal on the relationship between the Federal Government and the States, as required by Executive Order 12612 on "Federalism." The agency concludes that preemption of State or local rules that permit disclosure of the identities of the voluntary reporter or persons identified in an adverse event report for human drugs, biologics, and devices is consistent with this Executive Order.

Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate "where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope (section 3(b)). The constitutional basis for FDA's authority to regulate the safety and efficacy of human drugs, biologics, and devices is beyond challenge. Congress' decision to vest FDA with the responsibility to establish a regulatory scheme to monitor the safety of these products demonstrates Congress' view that the safety of human drugs, biologics, and devices is a problem of national scope (21 U.S.C. 355(k) and 42 U.S.C. 262)).

Executive Order 12612 expressly contemplates preemption where there is a conflict of State and Federal authority under Federal statute (section 4(a)). State and local rules of civil procedure, rules of evidence, and other rules and regulations that permit or require disclosure of the identities of those who report adverse events associated with human drugs, biologics, and devices are an obstacle to fulfilling FDA's charge to monitor the safety and efficacy of these products. The guarantee of confidentiality of the reporters' and patients' identities is necessary to assure meaningful reporting of adverse events. In addition, Congress specified that Federal regulations issued to monitor the safety of drug products "shall have due regard for the professional ethics of the medical profession and the interests of patients" (21 U.S.C. 355(k) and 360i). State and local rules and regulations that permit disclosure of the identities conflict with this requirement by jeopardizing confidentiality and the physician-patient relationship.

Executive Order 12612 requires that any Federal preemption be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated (section 4(c)). The proposed regulation is narrowly drawn and focuses solely on protecting the identity of the reporter and patient and other individuals named in the report. The proposed rule does not preempt State and local laws that require disclosure of the substance of the adverse event reports.

As required by the Executive Order, States will be given, through this notice of proposed rulemaking, an opportunity to participate in the proceedings to preempt State and local laws (section 4(e)). In addition, pursuant to the Order, the appropriate officials and organizations representing the States will be consulted before this proposed action is implemented (section 3(a)).

The agency concludes that the policy proposed in this document has been assessed in light of the principles,

criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose additional costs or burdens on the States; and that this policy will not affect the States' ability to discharge traditional State governmental functions.

VII. Economic Impact

FDA has considered the economic impact of this proposed rule and concludes that it would impose no additional costs on industry or the general public. The value to an individual litigant of having the identities of reporters and subjects of adverse experiences is difficult to estimate; however, litigants will have available the substance of adverse experience reports, which is of greater importance. Although tort litigation could provide substantial economic benefit to an individual litigant, the net gain to health care and public health through efficient and complete reporting of serious adverse reactions greatly outweighs any damage an individual litigant may suffer from lack of access to the names of patients or reporters who are not parties in the litigant's lawsuit. Accordingly, FDA concludes that this proposed rule is not significant as defined by Executive Order 12866 and certifies that this proposed rule would not have a substantial economic effect on a significant number of small entities which would require a regulatory flexibility analysis under the requirements of the Regulatory Flexibility Act of 1980.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Beard, K., "Adverse reactions as a cause of hospital admissions in the aged," Drugs & Aging, 2:356–367, 1992.

2. Scott, H. D., S. E. Rosenbaum, W. J. Waters, et al., "Rhode Island physicians recognition and reporting of adverse drug reactions," Rhode Island Medical Journal, 70:311–316, 1987.

3. Griffin, J. P., and J. C. P. Weber, "Voluntary systems of adverse reaction reporting: Part II," Adverse Drug Reactions and Acute Poisoning Reviews, 1:23–55, 1986.

4. Koch, K. E., "Adverse Drug Reactions," in The Handbook of Institutional Pharmacy Practice, 3d ed., edited by Brown, T., Bethesda, MD, American Society of Hospital Pharmacists, pp. 279–291, 1992.

5. Practice Standards of the American Society of Hospital Pharmacists, 1992–1993.

6. Joint Commission on Accreditation of Healthcare Organizations, Accreditation Manual, Chicago, IL, 1993.

7. Mathematics Policy Research, "American Medical Association Survey of Physicians Regarding Adverse Event Reporting," October, 1992.

8. Milstein, J., G. Faich, J. P. Hsu, et al., "Factors affecting physician reporting of adverse drug reactions," Drug Information Journal, 20:157–164, 1986.

9. Scott, H., S. Rosenbaum, W. Waters, et al., "Rhode Island physicians' recognition and reporting of adverse drug reactions," Rhode Island Medical Journal, 70:311–316, 1987.

10. Juergens, J., and B. Banahan, "Adverse drug reaction reporting by Mississippi physicians," Journal of the Mississippi State Medical Association, 2:33–37, 1986.

11. 1993 AMA Council on Ethical and Judicial Affairs Opinion Memorandum.

X. Request for Comments

Interested persons may, on or before March 28, 1994, submit to 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.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.63 is amended by adding new paragraph (f) to read as follows:

§ 20.63 Personnel, medical, and similar files, disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

* * * * *

(f) The names and any information that would identify the voluntary reporter or any other person named in any adverse event report associated with a human drug, biologic, or medical device product shall not be disclosed by the Food and Drug Administration or by a manufacturer in possession of such reports in response to a request. Information that would identify the voluntary reporter or persons identified in the report includes, but is not limited to, the name, address, institution, or any other information that would lead to the identities of the reporter or person identified in a report. This provision does not affect disclosure of the identities of reporters required by statute or regulation to make adverse event reports. Disclosure of the identities of such reporters is governed by the applicable statutes and regulations.

(1) *Exceptions.* (i) Identities may be disclosed if both the voluntary reporter and the person identified in an adverse event report or that person's legal representative consent in writing to disclosure; or

(ii) Identities may be disclosed pursuant to a court order in the course of medical malpractice litigation involving both the person who experienced the reported adverse event and the voluntary reporter; or

(iii) The report shall be disclosed to the individual who is the subject of the report upon request.

(2) *Preemption.* No State or local governing entity shall establish or continue in effect any law, rule, regulation or other requirement that permits or requires disclosure of the identities of the voluntary reporter or other person identified in an adverse event report except as provided in this section.

Dated: January 21, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1640 Filed 1–21–94; 4:50 pm]

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federal register

Thursday
January 27, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 163
General Forestry Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 163

RIN 1076–AC44

General Forestry Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this rulemaking action is to revise the "General Forestry Regulations" to implement the provisions of the National Indian Forest Resources Management Act.

The law reaffirmed many aspects of the existing Indian forestry program and established new program direction for cooperative agreements between the Department of the Interior and Indian tribes, forest trespass, Secretarial recognition of tribal laws pertaining to Indian forest lands, Indian forestry program assessments, Indian forest land assistance accounts, tribal forestry programs, Alaska Native technical assistance and forestry education assistance.

The proposed rule establishes uniform Indian forestry program operating policy that complies with the National Indian Forest Resources Management Act.

DATES: Comments must be received on or March 28, 1994.

ADDRESSES: Mail or hand deliver comments to: Mr. Jim Stires, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana; or Mr. Jim Howe, Department of the Interior, Bureau of Indian Affairs, Division of Forestry, 1849 C Street, NW., Mail Stop 4545 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Stires, Bureau of Indian Affairs, Billings Area Office, Branch of Forestry, telephone (406) 657–6358.

SUPPLEMENTARY INFORMATION: The proposed rule has been developed with full participation and consultation of the affected Indian and Alaska Native public. Prior to drafting the proposed rule, public scoping meetings were announced and held in Minneapolis, Portland, Phoenix and Anchorage in February and March, 1991. Input from those meetings was considered and addressed in the proposed rule. Additional consultation with the affected public was accomplished by maintaining close communication with the Intertribal Timber Council (ITC) during the rule drafting process and including ITC members on the project steering committee and project in working groups.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 208 DM 8.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the addresses section of this document.

This document has been reviewed under Executive Order 12866. It will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, Bureau of Indian Affairs, Branch of Forestry, Billings, Montana.

List of Subjects in 25 CFR Part 163

Forests and forest products; Indian—lands; Education.

For the reasons set forth in the preamble, part 163 of title 25 of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 163—GENERAL FOREST REGULATIONS

Subpart A—General Provisions

Sec.
163.1 Definitions.
163.2 Information collection.
163.3 Scope and objectives.
163.4 Secretarial recognition of tribal laws.

Subpart B—Forest Management and Operations

163.10 Management of Indian forest land.
163.11 Forest management planning and sustained yield management.
163.12 Harvesting restrictions.
163.13 Indian tribal forest enterprise operations.
163.14 Sale of forest products.
163.15 Advertisement of sales.
163.16 Forest product sales without advertisement.
163.17 Deposit with bid.
163.18 Acceptance and rejection of bids.
163.19 Contracts for the sale of forest products.
163.20 Execution and approval of contracts.
163.21 Bonds required.
163.22 Payment for forest products.
163.23 Advance payment for timber products.
163.24 Duration of timber contracts.
163.25 Forest management deductions.
163.26 Forest product harvesting permits.
163.27 Free-use harvesting without permits.
163.28 Fire management measures.
163.29 Trespass.
163.30 Revocable road use and construction permits for removal of commercial forest products.
163.31 Insect and disease control.
163.32 Forest development.
163.33 Administrative appeals.
163.34 Environmental compliance.
163.35 Indian forest land assistance account.
163.36 Tribal forestry program financial support.
163.37 Forest management research.

Subpart C—Forestry Education, Education Assistance, Recruitment and Training

163.40 Indian and Alaska Native forestry education assistance.
163.41 Postgraduation recruitment, continuing education and training programs.
163.42 Obligated service and breach of contract.

Subpart D—Alaska Native Technical Assistance Program

163.60 Purpose and scope.
163.61 Evaluation committee.
163.62 Annual funding needs assessment and rating.
163.63 Contract, grant, or agreement application and award process.

Subpart E—Cooperative Agreements

163.70 Purpose of agreements.
163.71 Agreement funding.
163.72 Supervisory relationship.

Subpart F—Program Assessment

163.80 Periodic assessment report.
163.81 Assessment guidelines.
163.82 Annual status report.
163.83 Assistance from the Secretary of Agriculture.

Authority: 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 466; and 3101–3120.

Subpart A—General Provisions

§ 163.1 Definitions.

Advance deposits means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

Advance payments means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished

within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

Alaska Native means native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

ANCSA corporation means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

Approval means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

Approving officer means the officer approving instruments of sale for forest products or his/her authorized representative.

Authorized representative means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

Authorized tribal representative means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

Beneficial owner means an individual or entity who holds an ownership interest in Indian land.

Bid deposit means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated volume contracts or an installment payment in predetermined volume contracts.

Commercial forest land means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

Forest or forest land means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

Forest land management activities means all activities performed in the management of Indian forest land including the improvement and maintenance of extended season primary and secondary Indian forest land road systems.

Forest management deduction means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

Forest management plan means the principle document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

Forest products means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

Forest resources means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

Forester intern means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to § 163.40(b).

Forestry-related field or *forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to § 163.40(a)(1).

Indian means a member of an Indian tribe.

Indian enterprise means an enterprise which is designated as such by the Secretary or tribe.

Indian forest land means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

Indian land means land title to which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

Indian tribe or *tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

Installment payments means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract value based on purchaser bid. Payments made are normally not refundable.

Integrated resource management plan means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

Noncommercial forest land means forest land that is available for extensive management, but is incapable of producing marketable forest products. Such land may be economically harvested, but the site quality does not warrant significant investment in future crops.

Productive forest land means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

Reservation means an Indian reservation established pursuant to treaties, Acts of Congress or Executive Orders and public domain Indian allotments, rancherias, and former Indian reservations in Oklahoma.

Secretary means the Secretary of the Interior or his or her authorized representative.

Stumpage rate means the stumpage value per unit of measure for a forest product.

Stumpage value means the value of a forest product prior to extraction from Indian forest land.

Sustained yield means the yield of forest products that a forest can produce continuously at a given intensity of management.

Timberland means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

Trespass means the removal of forest products from Indian forest land or the severance or injury of forest products on Indian forest land except when authorized by law and applicable Federal or tribal regulations. Trespass includes any damage to forest resources on Indian forest lands resulting from activities under contracts or permits obtained through fraud or material misrepresentation of fact.

Tribal forest enterprise means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

Unproductive forest land means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

Woodland means forest land not included within the timberland classification, stocked or capable of being stocked, with tree species of such form and size that the wood content is generally marketable within the region for products other than lumber, pulpwood or veneer.

§ 163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.*

§ 163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

§ 163.4 Secretarial recognition of tribal laws.

Subject to the Secretary's trust responsibilities and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(a) Assistance in the enforcement of such laws;

(b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(c) Upon the request of an Indian tribe, the appearance in tribal forums.

Subpart B—Forest Management and Operations

§ 163.10 Management of Indian forest land.

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3.

§ 163.11 Forest management planning and sustained yield management.

(a) To further the objectives identified in § 163.3, an appropriate forest management plan shall be prepared and revised as needed. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out through participation in the development and implementation of integrated resource management plans which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a stand-alone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between planned net growth and harvest at the earliest practical time.

§ 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless

provisions for natural and/or artificial forestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally good practice to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3.

§ 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.22. However, the Secretary may issue special instructions for payment by methods other than those in § 163.22; and

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

§ 163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized tribal representatives, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial owner(s).

(b) On Indian forest land not formally designated for retention in its natural state, the Secretary may sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage value exceeding $15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in § 163.20.

(d) With the approval of the Secretary, authorized Indian owners who have been duly apprised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value.

(e) Except as provided in § 163.14(d), in all such sales, the forest products shall be appraised and sold at stumpage rates not less than those established by the Secretary.

§ 163.15 Advertisement of sales.

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26, sales of forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the forest products offered does not exceed $15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds $15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed $50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds $50,000 but not $250,000, for not less than 30 days; and if the estimated stumpage value exceeds $250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

§ 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

§ 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than $100,000

and in any event not less than $1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is $100,000 to $250,000 but in any event not less than $10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds $250,000 but in any event not less than $12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

§ 163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

§ 163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding $15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

§ 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the Indian owner(s) or the Secretary acting pursuant to a power of attorney from the Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for those persons whose ownership in a decedent's estate has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

§ 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to § 163.13 or in timber cutting permits issued pursuant to § 163.26.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed $15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds $15,000 but is not over $150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than $3,000.

(3) In sales in which the estimated stumpage value exceeds $150,000, but is not over $350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than $22,500.

(4) In sales in which the estimated stumpage value exceeds $350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than $35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act under a power of attorney;

(3) Negotiable U.S. Government securities supported by appropriate power of attorney; or

(4) An irrevocable letter of credit.

§ 163.22 Payment for forest products.

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to § 163.13, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to § 163.25, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advanced deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advanced payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

§ 163.23 Advance payment for timber products.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in § 163.23(a).

§ 163.24 Duration of timber contracts.

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

§ 163.25 Forest management deductions.

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where:

(1) The total consideration furnished under a contract, permit or other document for the sale of forest products is less than $5,001; or

(2) The monies collected are derived from trespass, defaulted contracts or other civil judgments.

(d) Except as provided in § 163.25(e), the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary shall increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes appropriation of tribal funds for Indian forest land management activities. Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) For Indian forest lands located outside the boundaries of an Indian reservation, forest management deductions shall be handled in a manner similar to that described under § 163.25(f)(1) if the expenditure plan approved by an Indian tribe and the Secretary provides for the conduct of forest land management activities on such lands.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall

not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within one hundred twenty (120) days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in § 163.25(f) only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

§ 163.26 Forest product harvesting permits.

(a) Except as provided in §§ 163.13 and 163.27, removal of forest products that are not under formal contract, pursuant to § 163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in § 163.20. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed $5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in § 163.25, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed $25,000. For the purpose of issuance of paid permits, individual shall mean an individual or any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to § 163.25. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by § 163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary that he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

§ 163.27 Free-use harvesting without permits.

With the consent of the Indian owners and the Secretary, Indians may cut designated types of forest products from Indian forest land without a permit or contract, and without charge. Timber cut under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

§ 163.28 Fire management measures.

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary will conduct a wildfire prevention program to reduce the number of person-caused fires and to prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

§ 163.29 Trespass.

(a) Trespassers will be liable for penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in tribal court.* The measure of damages to be applied in cases of timber and related trespass in tribal court will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless Federal law prescribes a different rule. Where tribal law does not supply a measure of damages, the measure shall be that prescribed by the law of the state in which the trespass was committed, unless Federal law prescribes a different measure.

(2) *Cases in Federal court.* The measure of damages to be applied in cases of timber and related trespass in Federal court will be that prescribed by Federal law. In the absence of applicable Federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed and by the law of the state in which it was committed.

(3) Civil penalties for trespass include:

(i) Treble damages, whenever any person, without lawful authority, willfully injures, severs, or carries off from Indian land any tree, timber, or shrub. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence

that the acts were committed willfully, intentionally, and without requisite consent. Treble damages shall be based upon the fair market value of the highest-valued product obtainable from the raw materials involved in the trespass.

(ii) Double damages, whenever a trespasser can prove that the trespass act was casual or involuntary, or that the trespasser had probable cause to believe that the land on which the trespass was committed was his own or that of the person in whose service or by whose direction the act was done. Double damages shall be based upon the fair market value of the highest-valued product obtainable from the raw materials involved in the trespass.

(iii) Payment of costs associated with damage to Indian forest land including, but not limited to, rehabilitation, reforestation, lost future revenue, loss of productivity, and damage to other forest resources.

(iv) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of the settlement, such as field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(b) Payment of civil penalties may involve collection of cash, forfeiture of real and personal property, and garnishment. Any cash or other proceeds realized from forfeiture of equipment or other goods or forest products damaged or taken in the trespass, shall be applied to civil penalties and other expenses incurred by the enforcement agency and the beneficial owner(s) damaged by the trespass. After disposition of real and personal property to pay civil liability penalties and enforcement costs of the trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery of civil penalties, penalty damages collected will be equitably distributed among beneficial owners based on the estimate of damages for the trespass.

(c) Indian beneficial owners who trespass, or are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive damages collected as a civil penalty in consequence of the trespass.

(d) Civil penalties collected under § 163.29(a) shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When there is reason to believe that Indian forest products are involved in trespass, the agency superintendent or such other representative of the Secretary with responsibility for the reservation may prohibit the removal of such forest products from Indian land or have such forest products seized for safekeeping and use as evidence of trespass. When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under government supervision, the representative of the Secretary with responsibility for the reservation shall immediately notify the owner of the land or the party in possession of the trespass products that such products could be Indian trust property involved in a trespass and that no action to remove or otherwise dispose of such products may be taken unless authorized by the Secretary. The representative of the Secretary shall cause Indian forest products that can be positively identified to be sold where practicable to recover their value for the beneficial Indian owners prior to deterioration.

(f) Whenever an individual authorized to enforce against trespass activity has probable cause to believe that trespass activity has occurred, such individual may seize and take possession of the products and/or equipment involved in the trespass activity. All equipment seized shall be kept in the custody of the enforcement agency for use as evidence unless otherwise ordered by a court of competent jurisdiction. The representative of the Secretary simultaneously with any seizure shall give written notice of the seizure to the party in possession of the products and/or equipment involved in the apparent trespass activity. Such notice shall include the statement that the seizure may be administratively appealed pursuant to part 2 of this Title.

(g) The representative of the Secretary or the authorized tribal representative will promptly determine if a trespass has occurred. The appropriate representative shall issue an official notice of trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The notice will inform the trespasser, buyer, or processor, that the Bureau of Indian Affairs has determined that a trespass has occurred, of the basis for the determination, and of the seizure of forest products and/or equipment involved in trespass and that the determination and the seizure may be administratively appealed as actions of the Bureau of Indian Affairs under part 2 of this Title. Said representative shall post a trespass notice on the property Any forest product seized under these procedures may be sold or otherwise disposed of as determined appropriate by the Bureau of Indian Affairs and such action shall not be stayed by the filing of an administrative appeal. The Secretary's and tribe's representatives will be jointly responsible to coordinate prosecution of trespass actions and involve the appropriate officers of the Bureau of Indian Affairs and the tribe(s). Except where the Secretary defers to tribal prosecution or the tribe chooses not to be so bound, said representatives will determine the appropriate forum(s) for prosecution of each case not administratively settled.

(h) The Secretary may accept payment of damages in full in the settlement of civil trespass cases without resort to court action. In the absence of a court decision, the Secretary will determine the procedure and approve acceptance of any negotiated settlements.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass to Indian tribes.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce section 307 of the National Indian Forest Resources Management Act of 1990 and this section against any person.

(1) The Secretary shall acknowledge said civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction on trespass cases as set forth in paragraph (j)(1) of this section, the Secretary shall, upon request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each

trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the officials responsible for initiating cases in the selected forum(s).

(3) The Secretary may rescind deferral to prosecute civil trespass:

(i) Upon determination by a court of competent jurisdiction that the tribal court has not adhered to the due process and equal protection requirements of the Indian Civil Rights Act in forest trespass cases, and the failure of the tribal court to meet said requirements; or

(ii) If no determination is forthcoming after one year from a tribal court's action in a forest trespass case that the Secretary determines violates said requirements.

(4) If the Secretary determines that said rescission is justified, he or she shall provide written notice to the chief judge of the tribal judiciary of the findings justifying said rescission and of steps needed to remedy violations of due process and/or equal protection. If said steps are not taken within 60 days, the Secretary may rescind deferral. The affected tribe(s) may appeal a rescission under part 2 of this Title.

§ 163.30 Revocable road use and construction permits for removal of commercial forest products.

(a) The Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as Agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or an interest therein are unknown, and the owner(s) of any interests therein whose whereabouts are known or majority thereof, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest therein have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any owner thereof, provided that once the heirs or devisees of the deceased owner are determined, their consent is obtained; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), which cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, subchapter H, 25 CFR part 169, or conflict with provisions of that part.

§ 163.31 Insect and disease control.

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

§ 163.32 Forest development.

Forest development pertains to forest land management activities undertaken to improve the productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to re-establish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

§ 163.33 Administrative appeals.

Any challenge to action taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, and any other applicable regulations covering appeals and shall not stay any action unless otherwise directed by the Secretary.

§ 163.34 Environmental compliance.

Actions under the regulations in this part will be reviewed for potential environmental impacts, under the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and using for guidance applicable tribal laws and regulations.

§ 163.35 Indian forest land assistance account.

(a) At the request of a tribe's authorized representatives, the Secretary may establish, within the tribe's trust fund account, a forest land assistance account.

(b) Deposits into the account shall be credited either to forest transportation or to general forest land management activities.

(c) Deposits into the account may include:

(1) Funds from non-Federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of § 163.35(c)(3), unobligated forestry appropriations shall consist of those balances which remain unobligated at the end of the fiscal year(s) for which such funds are appropriated and which are identified in the finance system by the tribe's organization code, and organization code is a unique number assigned to each tribe in the finance system.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) In addition to the annual audit performed by the Secretary to oversee trust funds, the Secretary may, where

circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the results of such audits to the tribe(s).

§ 163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes which has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional forty (40) percent of the annual salary for such a position to pay for fringe benefits and support costs;

(2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional forty (40) percent of the annual salary for such a position to pay for fringe benefits and support costs; and

(3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

(1) A funding level qualification value shall be determined for each eligible applicant using the following formula. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one (1) or greater shall qualify for level one assistance.

Funding Level Qualification Formula

$$\left[\frac{.5 \times CA}{Tot.\,CA} + \frac{.5 \times AAC}{Tot.\,AAC}\right] \times 1000$$

where:

CA=applicant's total commercial Indian forest land acres;

Tot. CA=national total commercial Indian forest land acres;

AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and

Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under § 163.36(d) are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under § 163.36(d) are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

(1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;

(2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and

(3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

§ 163.37 Forest management research.

The Secretary, with the consent of the authorized Indian representatives is authorized to perform forestry research activities to improve the basis for determining appropriate land management activities to apply to Indian forest land.

Subpart C—Forestry Education, Education Assistance, Recruitment and Training

§ 163.40 Indian and Alaska Native forestry education assistance.

(a) *Establishment and evaluation of the forestry education assistance programs.*

(1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. Such committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure there are adequate Indian and Alaska

Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.*

(1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

(i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;

(ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related field; and

(iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in § 163.40(b)(3) may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

(i) Be eligible for Indian preference as defined in 25 CFR part 5, subchapter A;

(ii) Possess a high school diploma or its recognized equivalent;

(iii) Be able to successfully complete the intern program within a three year maximum time period; and

(iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semi-annually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by § 163.40(b)(3)(iv) may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an articulation agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related degree program at a baccalaureate-granting institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to § 163.40(a)(1) will annually evaluate the performance of forester intern program participants against requirements enumerated in § 163.40(b)(6) to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.*

(1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b), and the provisions of chapter 308 of the Federal Personnel Manual.

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in chapter 308 of the Federal Personnel Manual;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants baccalaureate degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an articulation agreement with a college or university which grants baccalaureate degrees in forestry or forestry-related curriculums. The articulation agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related degree program at the baccalaureate-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in § 163.40(c)(3) without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.*

(1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry, to establish and

grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to § 163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§ 163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one half academic years of general, undergraduate course work leading to a degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an articulation agreement with a college or university which grants baccalaureate degrees in forestry or forestry-related curriculums. The articulation agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the baccalaureate-granting institution.

(6) Pregraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a baccalaureate degree in a forestry or forestry-related curriculum; and.

(ii) Be accepted into a forestry or forestry-related baccalaureate degree-granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to § 163.40(a)(1), for which funding is available.

(e) *Forestry education outreach.*

(1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness;

(iii) Involve students in projects and activities oriented to forestry related professions early so students realize the need to complete required pre-college courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to § 163.40(a)(1).

(f) *Postgraduate studies.*

(1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporations so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by § 163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to § 163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with § 163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with § 163.42(b).

§ 163.41 Postgraduation recruitment, continuing education and training programs.

(a) *Postgraduation recruitment program.*

(1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry

program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry-related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with § 163.42(a). Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with § 163.42(b).

(b) *Postgraduate intergovernmental internships.*

(1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of agencies of the Department of the Interior.

(2) Forester or forestry-related personnel from other Department of the Interior agencies may apply through proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to twenty-five (25) percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

(c) *Continuing education and training.*

(1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

§ 163.42 Obligated service and breach of contract.

(a) *Obligated service.*

(1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90 day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin the day after all program education requirements have been completed with the exception of the forester intern program which includes the special provisions outlined in § 163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferments granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for wavier. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for wavier.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) Forester intern program—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Corporation, shall not be included in this total.

(2) Cooperative education program—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) Scholarship program—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) Postgraduation recruitment program—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) Postgraduate studies program—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.*

Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.

Subpart D—Alaska Native Technical Assistance Program

§ 163.60 Purpose and scope.

(a) The Secretary shall provide a technical assistance program to ANCSA Corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA Corporation forest land, and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

§ 163.61 Evaluation committee.

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

§ 163.62 Annual funding needs assessment and rating.

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

§ 163.63 Contract, grant, or agreement application and award process.

(a) At such time that the budget for ANCSA corporation technical assistance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

(1) Preparing the technical parts of the contract, grant, or agreement application; and

(2) Obtaining technical assistance from other Federal agencies.

Subpart E—Cooperative Agreements

§ 163.70 Purpose of agreements.

(a) To facilitate administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

(1) Engage in cooperative manpower and job training and development programs;

(2) Develop and publish, cooperative environmental education and natural resource planning materials; and

(3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefitted. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

§ 163.71 Agreement funding.

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

§ 163.72 Supervisory relationship.

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

Subpart F—Program Assessment

§ 163.80 Periodic assessment report.

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices under the guidelines established in § 163.81.

(a) The initial assessment shall, subject to the availability of appropriations, be completed no later than November 28, 1993. Subsequent

assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

§ 163.81 Assessment guidelines.

Assessments shall be national in scope and shall include:

(a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;

(b) A survey of the condition of Indian forest land, including health and productivity levels;

(c) An evaluation of the staffing patterns, by management activity, of forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

§ 163.82 Annual status report.

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, the quantity and value of timber available for sale, offered for sale, and sold, and the acres on which silvicultural treatments were accomplished for each area covered by an approved forest management plan.

§ 163.83 Assistance from the Secretary of Agriculture.

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80.

Dated: October 21, 1993.

Marshall M. Cutsforth,

Acting Assistant Secretary—Indian Affairs.

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Thursday
January 27, 1994

Part V

Department of the Interior

Bureau of Indian Affairs

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting, Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00100-94-35140]

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: February 8-10, 1994, 9 a.m. to 5:30 p.m.; the Aladdin Hotel, 3667 Las Vegas Boulevard South, Las Vegas, Nevada, 89109, (702) 736-0223. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 320 SIB; 1849 C Street NW.; Washington, DC 20240; Telephone number (202) 208-3621.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss organizational and management system changes mandated by the National Performance Review Report, "Creating a Government that Works Better & Costs Less," Public Law 103-62, "the Government Performance and Results Act," and President Clinton's budget deficit reduction targets and initiatives. Proposals for restructuring the Bureau of Indian Affairs in light of these mandates and in accordance with the principles adopted by the Task Force will be discussed and options prepared for consideration by the Tribes. The Task Force also will proceed with its identification of BIAM and CFR changes and Tribal Budget System enhancements that accommodate the organizational proposals. Public attendance and participation in this meeting are encouraged, and time for public comments has been scheduled.

Dated: January 24, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94-1705 Filed 1-26-94; 8:45 am]

BILLING CODE 4310-02-P

federal register

Thursday
January 27, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims

January 10, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rejected claims.

SUMMARY: This notice lists certain potential pre-1966 Indian damage claims which have been rejected for litigation by the Secretary of the Interior pursuant to the Indian Claims Limitation Act of 1982. This notice also contains a list of claims which the Bureau of Indian Affairs considers resolved.

DATES: To file an action in court, on any claim contained on the list of rejected claims, tribes, groups, and individual Indians must file such action no later than January 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue, S.E., Aberdeen, South Dakota 57401–4382, Telephone (605) 226–7343;

Albuquerque Area Director, Bureau of Indian Affairs, 615 1st Street, NW., Box 26567, Albuquerque, New Mexico 87125–6567, Telephone (505) 766–3170;

Anadarko Area Director, Bureau of Indian Affairs, WCD Office Complex, Box 368, Anadarko, Oklahoma 73005–0368, Telephone (405) 247–6673;

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101–1397, Telephone (406) 657–6315;

Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, Suite 260/Mailroom, Arlington, VA 22203 Telephone (703) 235–2571;

Juneau Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 3–8000, Juneau, Alaska 99802–1219, Telephone (907) 586–7177;

Minneapolis Area Director, Bureau of Indian Affairs, 15 South 5th Street—10th Floor, Minneapolis, Minnesota 55401–1020, Telephone (612) 349–3631;

Muskogee Area Director, Bureau of Indian Affairs, 5th & West Okmulgee, Muskogee, OK 74401–4898, Telephone (918) 687–2296;

Navajo Area Director, Bureau of Indian Affairs, P.O. Box M, Window Rock, Arizona 86515–0714, Telephone (505) 863–9501;

Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001–0010, Telephone (602) 241–2305;

Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Ave., Portland, OR 97232–4169, Telephone (503) 231–6702;

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1884, Telephone (916) 978–4691.

SUPPLEMENTARY INFORMATION: The Indian Claims Limitation Act of 1982, Public Law 97–394 (96 Stat. 1966, 1976) extends the statute of limitations governing pre-1966 Indian damage claims (28 U.S.C. 2415) which was due to expire on December 31, 1982. A claim subject to the statute of limitations is an Indian claim for money damages which arose prior to July 18, 1966. Claims against the United States are not governed by this law, only money damage claims against persons, corporations, states, or any other entities except the Federal Government. Claims for title to land are also not governed by this statute of limitations. This notice is required by section 5(c) of the Act.

Pursuant to sections 3 and 4 of the Indian Claims Limitation Act of 1982, lists of all potential Indian damage claims, which had at any time been identified by or submitted to the Bureau of Indian Affairs under the Department of the Interior's Statute of Limitations Program, were published in the **Federal Register** at 48 FR 13698, on March 31, 1983, amended at 48 FR 15008, on April 6, 1983; and at 48 FR 51204, on November 7, 1983, amended at 49 FR 518, on January 4, 1984. Excluded from these lists were claims which were erroneously identified as claims and those which had no legal merit whatsoever.

When rejecting any claim or category of claims included on the published lists, the Secretary must send a report to the appropriate tribe whose rights or the rights of whose members could be affected by the rejection. The report must identify each separate claim being rejected, list the names of potential plaintiffs and defendants, if known or reasonably ascertainable, and briefly set forth the reason or reasons for rejection. A written notice of rejection must be sent to individual Indian claimants if their identities and addresses are known or reasonably ascertainable from Bureau of Indian Affairs records. After a report has been forwarded to a tribe, the Secretary must publish a notice in the **Federal Register** identifying the claims covered in the report. By the terms of the Indian Claims Limitation Act of 1982, any right of action on any claim appearing on the following list of claims, which have been rejected and reported accordingly by the Secretary, shall be barred unless a complaint is filed in accordance with date established in the **DATES** section of this notice. A list of claims which the Bureau of Indian Affairs considers resolved follows the list of rejected claims.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

W.D. Babby,

Assistant Secretary—Indian Affairs.

MUSKOGEE AREA REJECTED CLAIMS:

G07–908–0314, G07–908–0337, G07–908–0342, G08–905–0001, G08–905–0023A, G08–905–0058, G08–905–0060, G08–905–0061, G08–905–0202, G08–905–0280, G08–905–0286, G08–905–0287, G08–905–0288, G08–905–0310A, G08–905–0331, G08–905–0346, G08–905–0346A, G08–905–0346B, G08–905–0346C, G08–905–0346D, G08–905–0346E, G08–905–0346F, G08–905–0346G, G08–905–0346H, G08–905–0346I, G08–905–0346J, G08–905–0346K, G08–905–0346L, G09–907–0026, G09–907–0055, G09–907–0062, G09–907–0104, G09–907–0148, G09–907–0155, G10–909–0001, G10–909–0002, G10–909–0003, G10–909–0006, G10–909–0008, G10–909–0010, G10–909–0011, G10–909–0014, G10–909–0015, G10–909–0016, G10–909–0017, G10–909–0018, G10–909–0019, G10–909–0020, G10–909–0021, G10–909–0022.

ABERDEEN AREA RESOLVED CLAIMS:

A05–303–0100, A05–303–0102, A05–303–0103, A05–303–0104, A05–303–0105, A05–303–0106, A05–303–0107, A05–303–0108, A05–303–0109, A05–303–0160, A05–303–0161, A05–303–0162, A05–303–0163, A05–303–0164, A05–303–0165, A05–303–0166, A05–303–0167, A05–303–0168, A05–303–0169, A05–303–0170, A05–303–0171, A05–303–0172, A05–303–0173, A05–303–0174, A05–303–0175, A05–303–0176, A05–303–0177, A05–303–0178, A05–303–0179, A05–303–0180, A05–303–0181, A05–303–0182, A05–303–0183, A05–303–0184, A05–303–0185, A05–303–0186, A05–303–0187, A05–303–0188, A05–303–0189, A05–303–0190, A05–303–0191, A05–303–0192, A05–303–0193, A05–303–0194, A05–303–0195, A05–303–0196, A05–303–0197, A05–303–0198, A05–303–0210, A05–303–0211, A05–303–0212, A05–303–0213, A05–303–0214, A05–303–0215, A05–303–0216, A05–303–0217, A05–303–0218, A05–303–0219, A05–303–0220, A05–303–0221, A05–303–0222, A05–303–0223, A05–303–0225, A05–303–0226, A05–303–0227, A05–303–0231, A05–303–0232, A05–303–0233, A05–303–0234, A05–303–0237, A05–303–0238, A05–303–0239, A05–

303–0240, A05–303–0242, A05–303–0243, A05–303–0244, A05–303–0245, A06–344–0001, A06–344–0002, A06–344–0003, A06–344–0004, A06–344–0005, A06–344–0006, A06–344–0007, A06–344–0008, A06–344–0009, A06–344–0010, A06–344–0011, A06–344–0012, A06–344–0013, A06–344–0014, A06–344–0015, A06–344–0016, A06–344–0017, A06–344–0018, A06–344–0019, A06–344–0020, A06–344–0021, A06–344–0022, A06–344–0023, A06–344–0024, A06–344–0026, A06–344–0027, A06–344–0029, A06–344–0030, A06–344–0031, A06–344–0032, A06–344–0033, A06–344–0034, A06–344–0035, A06–344–0036, A06–344–0037, A06–344–0038, A06–344–0039, A06–344–0041, A06–344–0042, A06–344–0043, A06–344–0044, A06–344–0045, A06–344–0046, A06–344–0047, A06–344–0048, A06–344–0049, A06–344–0051, A06–344–0052, A06–344–0053, A06–344–0054, A06–344–0055, A06–344–0056, A06–344–0057, A06–344–0058, A06–344–0059, A06–344–0060, A06–344–0061, A06–344–0062, A06–344–0063, A06–344–0064, A06–344–0065, A06–344–0067, A06–344–0068, A06–344–0069, A06–344–0070, A06–344–0071, A06–344–0072, A06–344–0073, A06–344–0074, A06–344–0075, A06–344–0077, A06–344–0078, A06–344–0079, A06–344–0080, A06–344–0081, A06–344–0082, A06–344–0083, A06–344–0084, A06–344–0085, A06–344–0086, A06–344–0087, A06–344–0089, A06–344–0091, A06–344–0092, A06–344–0093, A06–344–0095, A06–344–0096, A06–344–0097, A06–344–0099, A06–344–0100, A06–344–0101, A06–344–0102, A06–344–0103, A06–344–0104, A06–344–0105, A06–344–0106, A06–344–0108, A06–344–0110, A06–344–0111, A06–344–0112, A06–344–0113, A06–344–0114, A06–344–0115, A06–344–0116, A06–344–0117, A06–344–0118, A06–344–0119, A06–344–0120, A06–344–0121, A06–344–0122, A06–344–0123, A06–344–0124, A06–344–0125, A06–344–0126, A06–344–0127, A06–344–0128, A06–344–0129, A06–344–0130, A06–344–0132, A06–344–0133, A06–344–0134, A06–344–0135, A06–344–0136, A06–344–0137, A06–344–0138, A06–344–0139, A06–344–0140, A06–344–0141, A06–344–0142, A06–344–0143, A06–344–0145, A06–344–0146, A06–344–0149, A06–344–0150, A06–344–0152, A06–344–0153, A06–344–0154, A06–344–0156, A06–344–0157, A06–344–0158, A06–344–0159, A06–344–0160, A06–344–0161, A06–344–0162, A06–344–0164, A06–344–0165, A06–344–0167, A06–344–0168, A06–344–0169, A06–344–0170, A06–344–0171, A06–344–0172, A06–344–0173, A06–344–0174, A06–344–0175, A06–344–0176, A06–344–0177, A06–344–0178, A06–344–0179, A06–344–0180, A06–344–0181, A06–344–0182, A06–344–0183, A06–344–0184, A06–344–0185, A06–344–0186, A06–344–0187, A06–344–0188, A06–344–0190, A06–344–0191, A06–344–0192, A06–344–0193, A06–344–0194, A06–344–0195, A06–344–0196, A06–344–0197, A06–344–0198, A06–344–0200, A06–344–0201, A06–344–0202, A06–344–0203, A06–344–0204, A06–344–0205, A06–344–0206, A06–344–0207, A06–344–0208, A06–344–0226, A06–344–0227, A06–344–0440, A11–304–0001, A11–304–0003, A11–304–0005, A11–304–0006, A11–304–0008, A11–304–0009, A11–304–0010, A11–304–0011, A11–304–0012, A11–304–0014, A11–304–0016, A11–304–0017, A11–304–0018, A11–304–0019, A11–304–0020, A11–304–0021, A11–304–0023, A11–304–0025, A11–304–0026, A11–304–0027, A11–304–0029, A11–304–0030, A11–304–0031, A11–304–0032, A11–304–0034, A11–304–0035, A11–304–0036, A11–304–0037, A11–304–0039, A11–304–0040, A11–304–0042, A11–304–0043, A11–304–0044, A11–304–0047, A11–304–0050, A11–304–0051, A11–304–0053, A11–304–0055, A11–304–0056, A11–304–0058, A11–304–0060, A11–304–0061, A11–304–0063, A11–304–0064, A11–304–0065, A11–304–0066, A11–304–0067, A11–304–0068, A11–304–0069, A11–304–0071, A11–304–0072, A11–304–0073, A11–304–0074, A11–304–0076, A11–304–0077, A11–304–0078, A11–304–0082, A11–304–0083, A11–304–0085, A11–304–0086, A11–304–0087, A11–304–0089, A11–304–0090, A11–304–0091, A11–304–0092, A11–304–0093, A11–304–0095, A11–304–0096, A11–304–0098, A11–304–0099, A11–304–0100, A11–304–0101, A11–304–0102, A11–304–0103, A11–304–0104, A11–304–0106, A11–304–0107, A11–304–0108, A11–304–0110, A11–304–0111, A11–304–0112, A11–304–0113, A11–304–0114, A11–304–0117, A11–304–0118, A11–304–0239, A11–304–0242, A11–304–0243, A11–304–0251.

BILLINGS AREA RESOLVED CLAIMS:

C52–202–0059, C52–202–0060, C52–202–0081, C52–202–0087, C55–204–0053, C55–204–0103, C55–204–0120, C55–204–0123, C55–204–0124, C56–206–0037, C56–206–0038, C56–206–0039, C56–206–0040, C56–206–0049, C56–206–0052, C56–206–0061, C56–206–0068, C56–206–0079, C56–206–0091, C56–206–0093, C56–206–0097, C56–206–0101, C56–206–0124, C56–206–0126, C56–206–0136, C56–206–0137, C56–206–0145, C56–206–0157, C56–206–0158, C56–206–0159, C56–206–0160, C56–206–0162, C56–206–0164, C56–206–0168, C56–206–0180, C57–207–0042, C57–207–0043, C57–207–0050, C57–207–0055, C57–207–0061, C57–207–0066, C57–207–0082, C57–207–0096, C57–207–0102, C57–207–0103, C57–207–0104, C57–207–0105, C57–207–0106, C57–207–0111, C57–207–0114, C57–207–0126, C57–207–0127, C57–207–0133, C57–207–0147, C57–207–0149.

MINNEAPOLIS AREA RESOLVED CLAIMS:

F55–432–0052, F55–432–0056, F55–432–0057, F55–432–0058, F55–432–0059.

NAVAJO AREA RESOLVED CLAIMS:

N00–780–0023, N00–780–0037, N00–780–0097, N00–780–0098, N00–780–0100.

PORTLAND AREA RESOLVED CLAIMS:

P09–149–0001, P11–124–0041.

[FR Doc. 94–1726 Filed 1–26–94; 8:45 am]
BILLING CODE 4310–02–P

federal register

Thursday
January 27, 1994

Part VII

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Fiscal Year 1994; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program—Aquaculture Research for Fiscal Year 1994.

Authority and Funding

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Pub. L. 89-106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624 (7 U.S.C. 450i(c)(1)(A)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below.

Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Pursuant to section 719 of Pub. L. 103-111 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994) funds available in fiscal year 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to section 727(b) of Pub. L. 103-111, in the case of any equipment or product that may be authorized to be purchased with the funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400 (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the regulations governing Governmentwide Debarment and Suspension (Nonprocurement) and the Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017; (e) the New Restrictions on Lobbying, 7 CFR part 3018; (f) the CSRS regulations implementing the National Environmental Policy Act of 1969 (NEPA), 7 CFR part 3407; and (g) Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051 (58 FR 41410, August 3, 1993).

Introduction to Program Description

CSRS Contact: Dr. Meryl Broussard; Telephone: (202) 401-4061

Funds will be awarded to support research seeking solutions to improve waste management in commercially important aquacultural species. A total of approximately $316,000 will be available for this program area in fiscal year 1994. This amount may be allocated to a single proposal or multiple proposals.

Standard grants will be awarded to support basic studies in selected areas of aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below that are consistent with the mission of USDA. Program subareas and guidelines are provided below as bases from which proposals may be developed:

Program Area

1.0 Aquaculture Research

The overall objective of this research program is to enhance the knowledge base necessary for the continued growth of the domestic aquaculture industry as a form of sustainable agriculture. Emphasis is placed on research leading to improved production efficiency, increased competitiveness and wise environmental stewardship in private sector aquaculture in the United States. Because of limited funds for this program, only proposals focused on the interception, removal, and/or disposal of waste in commercially important finfish production systems will be considered.

Research should be directed towards studies aimed at a systems approach to (1) reduce the impact of waste within aquacultural production systems and/or (2) the interception, removal, and disposal of waste from aquacultural production systems. Studies should target the development or the refinement of cost effective waste management systems. Innovative approaches to reduction and removal of both dissolved and solid waste should be considered. The quantitative and qualitative characteristics of waste, as a result of feed formulation and feeding strategies, should be considered in the rational design of control systems and alternative waste management strategies. Mass balance approaches to understanding the fate of phosphorus and nitrogen in these systems should also be addressed.

Priority will be given to multi-disciplinary, multi-institutional team approaches and proposals with broad application to the aquaculture industry

Review Criteria

Proposals will be evaluated by a peer review group of qualified scientists selected in accordance with § 3400.11 of the administrative provisions governing the Special Research Grants Program. In accordance with § 3400.5(a), the following selection criteria for proposals will be used in lieu of those which appear in § 3400.15 of the administrative provisions:

Criteria	Maximum score
Overall Scientific and Technical Quality	40
Creative and innovative scientific approach	
Clear, concise, and achievable objectives	
Technical soundness of procedures	
Feasibility of attaining objectives	
Relevance and Importance of Proposed Research to Solution of Specific Area of Inquiry	20
Justification for specific proposed approach	
Literature review focused on specific approach	
Proposal addresses specific area of inquiry	
Budget, Resources, and Personnel	20
Necessary facilities, resources, and personnel available	
Budget appropriate for proposed research	
Demonstrated scientific capability of investigators	
Collaboration	10
Evidence of significant contributions by collaborators	
Evidence and justification of multi-disciplinary and/or multi-institutional collaboration	
Application of Research Results	10

Criteria*	Maximum score
Planned application and implementation of research results	
Extension, transferability and publication of results	
Potential for results to enhance agricultural sustainability	
Total	100

How to Obtain Application Materials

Copies of this solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR part 3400 (56 FR 58146, November 15, 1991), may be obtained by writing to the address or calling the telephone number below: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, AG Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number, to psb@csrs.esusda.gov which states that you want a copy of the application materials for the Fiscal Year 1994 Special Research Grants Program—Aquaculture Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

What to Submit

An original and nine copies of each proposal must be submitted. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Application for Funding" attached to the front. The Special Research Grants Program should be indicated in Block 7, and "Aquaculture Research 1.0" should be indicated in Block 8. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Application Kit.)

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Format for Research Grant Proposals

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in § 3400.4(c). In accordance with § 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at § 3400.4(c), the provisions of this solicitation shall apply.

Length of Proposal

Grant proposals must be limited to 15 pages, single spaced exclusive of required forms (i.e. cover page, budget form, certifications), bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel, and the required National Environmental Policy Act Statement (NEPA Compliance discussed below) with its supporting documentation. Information should be typed on one side of page only. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

Compliance With NEPA

As outlined in 7 CFR part 3407 (the CSRS regulations implementing NEPA), environmental data or documentation for any proposed project is to be provided to CSRS in order to assist CSRS in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The applicant should review the following categorical exclusions and determine if the proposed project may fall within one or more of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which relate to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and information programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions (7 CFR 3407.6)

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(11) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to make a determination regarding NEPA, as to whether any further action is required (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the environmental aspects of the proposed project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project may fall within one or more of the categorical exclusions listed above. This statement must include the reasons, with appropriate supporting documentation, as to why the proposed project falls within a particular exclusion or exclusions. If the proposed project falls within one or more of the categorical exclusions, the specific exclusion(s) must be identified. The information submitted in association

with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and the narrative statement with supporting documentation shall be placed at the back of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an EA or an EIS is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause a project to have a significant environmental effect.

Where and When to Submit Grant Applications

All copies of each proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. Do Not Bind. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the administrative provisions that govern the Special Research Grants Program, 7 CFR part 3400.

To be considered for funding in Fiscal Year 1994, each completed research grant application must be postmarked by April 18, 1994.

Proposals submitted through the regular mail must be postmarked by March 14, 1994, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals must be submitted to an express mail or a courier service, or brought to the following address by March 14, 1994: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; 901 D Street SW.; Washington, DC 20024. The telephone number is (202) 401–5048.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12866 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 18th day of January 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 94–1730 Filed 1–26–94; 8:45 am]

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Thursday
January 27, 1994

Part VIII

Department of Agriculture

Cooperative State Research Service
Agricultural Research Service

Biotechnology Risk Assessment Research Grants Program; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Research Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1994; Solicitation of Applications

Purpose

Proposals are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program (the "Program") for fiscal year 1994. The authority for the Program is contained in section 1668 of Pub. L. 101–624 (the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5921). The Program is administered by the Cooperative State Research Service (CSRS) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture.

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing genetically modified plants, animals, and microorganisms into the environment. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research conducted under it. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered.

Proposals based upon field research and whole organism-population level studies are strongly encouraged. Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research not appropriate to risk assessment. Proposals should be applicable to current regulatory issues surrounding the ecological impacts of genetically modified organisms, with special emphasis on natural ecosystem consequences.

Applicant Eligibility

Proposals may be submitted by any public or private research or educational institution or organization.

Available Funding

The approximate amount available for support of the program in fiscal year 1994 is $1,700,000.

Pursuant to Section 719 of Pub. L. 103–111 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994), funds available in fiscal year 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to sec. 727(b) of Pub. L. 103–111, in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities are encouraged to use such funds to purchase only American-made equipment or products.

Program Description

Under the Program, USDA will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and to help regulators develop policies concerning such introduction. Proposals are invited in the area of biotechnology risk assessment research as appropriate to agricultural plants, animals and microbes. Emphasis will be given to risk assessment research involving genetically modified organisms, but model systems using nongenetically modified organisms also will be considered if they can provide information that could lead to improved assessment of potential risks associated with the introduction of genetically modified organisms into the environment.

Proposals will be evaluated by a peer panel of scientists for, among other things, science quality; relevance for current regulatory issues; and intent to advance the safe application of biotechnology to agriculture by providing new knowledge for science-based regulatory decisions. The development of better methods for field testing genetically modified organisms will also be considered.

Areas of Research To Be Supported in Fiscal Year 1994

Proposals addressing the following research topics are requested:

1. Development of new risk assessment methods (e.g. monitoring organism escape, measuring biological impacts), and risk assessment procedures (e.g. comparative analysis of ecosystems, models to predict risks) that could be used in risk assessment of genetically modified fungi, bacteria, viruses (including animal vaccines), plants, arthropods, fish, birds, and mammals. Applicants should address the development of such new risk assessment methods in the course of addressing a specific and defined risk assessment issue, especially as pertains to genetically modified organisms.

2. Creation of information systems and computer models to support regulatory agency decision-making in regards to potential impacts to the environment over time (e.g., computer models to describe the interaction of environmental and organismal factors especially for establishment and dispersal of the organism).

3. Risk assessment of the environmental fate (e.g. survival, reproduction fitness, genetic stability, horizontal gene transfer) as correlated with effects (i.e., loss of genetic diversity, enhanced competition) of genetically modified fungi, bacteria, viruses, plants, arthropods, fish, birds and mammals introduced into the environment (e.g., not in a contained laboratory greenhouse or building); and studies or identification of traits which may influence fate and effects.

In response to requests to Program Directors and Federal regulatory agencies, as stipulated in the authorizing legislation for the Program, section 1668 of Pub. L. 101–624, the following specific areas of risk assessment research have been identified as priorities for this year:

—The bidirectional rates, mechanisms and impact of gene transfer between currently genetically transformable crop species and existing North American wild relatives of those crops including studies of methods of mitigation of potential gene exchange. Species specifically identified by the Animal and Plant Health Inspection Service include rye, oats, barley, sorghum and turfgrasses. Research could rely on reanalysis of published information and/or laboratory/filed studies.

—The potential for recombination between plant viruses and plant-encoded nocapsid viral genes (e.g. replicase), especially for those viruses in supergroup B (carmovirus, tombusvirus, luteovirus, sobemovirus). Such studies should identify recombination potentials and, if demonstrated, define frequencies and effect on symptom expression.

—The potential for plants to express nonviral genes using noncoding regulatory sequences (promoters, translational enhancers, termination sequences) derived from plant viruses that naturally infect the plants (e.g. cauliflower mosaic virus and Brassica supp.). The potential for changes in expression of introduced genes or other aspects of host physiology when the transgenic plant becomes infected with plant viruses, especially those from which the noncoding sequence was derived or related viruses.

—Changes in viral host ranges or the types of insects which can serve as

viral vectors due to the use of transgenic plants expressing viral genes.

—The potential for nontarget effects of plant-defense compounds expressed in genetically modified plant-associated microorganisms (e.g., compounds in phyllosphere or rhizosphere-inhabiting bacteria) or in plants (e.g., *Bacillus thuringiensis* delta endotoxin), especially in regard to persistence of the organisms and material in the environment.

—Identification of the minimal gene sequence(s) in an animal pathogen which could confer pathogencity on a nonpathogenic organism. Pathogenic organisms specially identified by the Animal and Plant Health Inspection Service as being of interest are Marek's disease virus, laryngo tracheitis virus, bovine leukemia virus, eastern equine encephalomyelitis virus, bovine diarrhea virus, Erysipelothrix rhusiopathiae and Haemophilus somnus.

Note: Individual investigators whose research projects are funded under the Program will be required to attend and present data on results of their research at an Annual Conference. Attendance costs at such a conference do not need to be included in the budgets of proposed research projects; such costs will be borne from funds previously awarded under the Program as part of a conference grant. Additionally, a final project report on research results will be required in a fixed protocol, electronic format, suitable for distribution by USDA on CD-ROM.

Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415 (58 FR 65646, December 15, 1993), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A-129 regarding debt collection;

7 CFR Part 15—Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 520—ARS implementation of the National Environmental Policy Act;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A-110, A-21, and A-122), and incorporating provisions of 31 U.S.C. 6301-6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017 as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSRS implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Programmatic Contact

For additional information on the Program, please contact:

Dr. David MacKenzie or Dr. Ann Lichens-Park, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2220, Washington, DC 20250-2220, Telephone: (202) 401-4892

or

Dr. Robert Faust, Agricultural Research Service, U.S. Department of Agriculture, room 336, Building 005, BARC-West, Beltsville, MD 20705, Telephone: (301) 504-5059.

How To Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR part 3415), and the Application Kit will be made available upon request. The Application Kit contains required forms, certifications, and instructions for preparing and submitting grant applications. The administrative provisions include guidelines for proposal format. Copies of this solicitation, the administrative provisions, and the Application Kit may be obtained by contacting: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250-2245, Telephone Number: (202) 401-5048

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@csrs.esusda.gov which states that you wish to receive a copy of the application materials for the Fiscal Year 1994 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

The format guidelines for full research proposals, found in the administrative provisions for the Program at s3415.4(d), should be followed for the preparation of proposals under the Program in fiscal year 1994 (Note that the Department elects not to solicit preproposals nor conference grant proposals in fiscal year 1994).

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 and 7 CFR part 520 (the CSRS and ARS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSRS and ARS so that CSRS and ARS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals,

disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS and ARS Categorical Exclusions (7 CFR 3407.6 and 7 CFR 520.5)

Based on previous experience, the following categories of CSRS and ARS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS and ARS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS and ARS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Proposal Submission

What to Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (Do not bind). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals submitted through the regular mail must be received by March 22, 1994, and must be sent to the following address: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Hand-delivered proposals must be submitted by close of business on March 22, 1994, to an express mail or courier service or brought to the following address (note that the zip code differs from that shown above): Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048.

Supplementary Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No: 10.219. For reasons set forth in the final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 291115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on this 10th day of January, 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

Essex E. Finney, Jr.,

Acting Administrator, Agricultural Research Service.

[FR Doc. 94–1729 Filed 1–26–94; 8:45 am]

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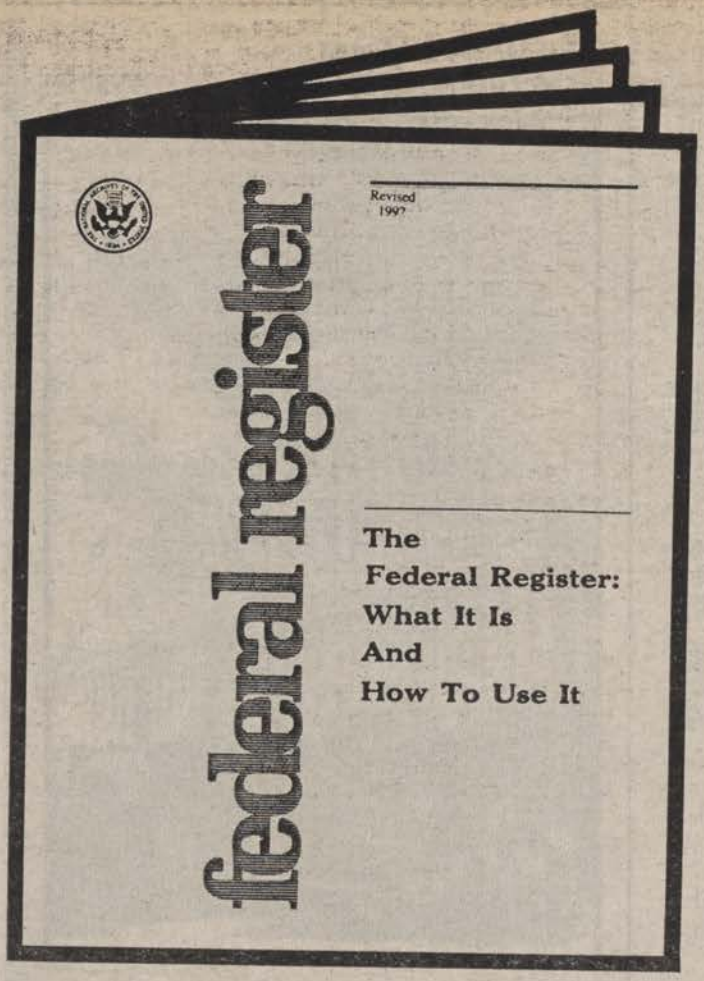
LIST OF PUBLIC LAWS

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.



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