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THE FEDERAL REGISTER

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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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–11 of January 13, 1994

Provision of Assistance to Jordan for Fiscal Year 1994

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 539 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Public Law 103–87), I hereby determine and certify that furnishing assistance to Jordan from funds appropriated or otherwise made available under that Act is in the national interest of the United States.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 13, 1994.

[FR Doc. 94–2366
Filed 1–28–94; 3:38 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 59, No. 21
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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.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and additions to the Foreign List. Both Lists were last published on October 25, 1993 (58 FR 54929), and became effective on November 8, 1993.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to and deletions from the OTC List. This supersedes the last OTC List which was effective November 8, 1993. Additions and deletions to the OTC List were last published on October 25, 1993 (58 FR 54929). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the additions to the Board's Foreign List, which was last published October 25, 1993 (58 FR 54929), and became effective November 8, 1993. There are no deletions from the Foreign List. The Foreign List includes those foreign securities that meet the criteria in § 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and additions to the Foreign List.

Deletions from the List of Marginable OTC Stocks

Stocks Removed For Failing Continued Listing Requirements

All American Semiconductor, Inc.
Class B, warrants (expire 06–18–97)
Alliance Imaging, Inc.
$.01 par common
BKLA Bancorp (California)
No par common
California Micro Devices Corp.
Warrants (expire 04–16–97)
Candies, Inc

Warrants (expire 01–18–94)
CBL Medical, Inc.
$.01 par common
Dynasty Classics Corporation
No par common
Energy Conversion Devices, Inc.
$.01 par common
Future Communications Inc.
$.001 par common
Industrial Funding Corp.
Class A, no par common
Invitro International
Warrants (expire 05–16–96)
Keene Corporation
$.0001 par common
Neozyme Corporation
$.01 par common
Tele-Communications, Inc.
Liquid yield options due 2008
TSL Holdings Inc.
$.01 par common
W.W. Williams Company, The
$1.00 par common
Wegener Corporation
$.01 par common

Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition

A & W Brands, Inc.
$.01 par common
Ahold N.V.
American Depositary Receipts
Amoskeag Company
$1.00 par common
Aritech Corp.
$1.00 par common
Autotrol Corporation
$.10 par common
Boston Five Bancorp, Inc.
$.01 par common
Bytex Corporation
$.10 par common
Checkpoint Systems, Inc.
$.10 par common
Compania Boliviana De Energia Electrica S.A.
No par common
Corestates Financial Corporation
$1.00 par common
Costco Wholesale Corporation
$.0033 par common
Elmwood Bancorp, Inc (Pennsylvania)
$1.00 par common
Engraph, Inc
$1.00 par common
First Amarillo Bancorporation, Inc
$1.00 par common
First AMFED Corporation
$.01 par common
First Bancorp Indiana, Inc.
No par common
Gateway FED Corporation (Ohio)
$ 01 par common
Geraghty & Miller, Inc.
$ 01 par common
Gerrity Oil and Gas Corporation
$.01 par common
Goody Products, Inc.
$ 10 par common
Heritage Bankcorp, Inc. (Michigan)
$.01 par common
Integrated Health Services, Inc.
$ 001 par common
Interfirst Bankcorp, Inc (Michigan)
$.01 par common
Jackson Country Federal Bank, A Federal Savings Bank
Series A, preferred stock
Jefferson Bank (Pennsylvania)
$1.75 par common
Kendall International, Inc.
$.01 par common
Masco Industries, Inc.
$1.00 par common 6% convertible debentures due 2011
Meca Software, Inc.
$.01 par common
Medco Containment Services, Inc.
$.01 par common
Mid-State Federal Savings Bank (Florida)
$1.00 par common
Millicom Incorporated
$.01 par common
Morrison Incorporated
$.01 par common
National Data Corporation
$.125 par common
Ohio Bancorp
No par common
Oil-Dri Corporation of America
$.10 par common
Osmonics, Inc.
$.01 par common
Pacific Bancorporation (California)
$1.88 par common
Preferred Health Care Ltd.
$.01 par common
Railroadmen's Federal Savings & Loan Association
$.01 par capital
Salem Sportswear Corporation
$.01 par common
Secor Bank, Federal Savings Bank (Alabama)
$.01 par common
Simula, Inc.
$.01 par common
Statesman Group, Inc., The
$1.00 par common
6¼% convertible subordinated debentures
Stewart Information Services Corp.
$1.00 par common
Sun Coast Plastics, Inc.
$.01 par common
Telematics International, Inc.
$.01 par common
Total Energold Corporation
No par common
Total Pharmaceutical Care, Inc.
No par common
Tristate Bancorp, The (Ohio)
$1.00 par common
United Mobile Homes, Inc.
$.10 par common
United Thermal Corporation
$.10 par common
Valley Bancorp, Inc.
$5.00 par common
Valley National Bancorp
No par common
Washington Homes, Inc.
$.01 par common
Wellington Leisure Products, Inc.
$.01 par common
Wisconsin Southern Gas Company, Inc.
$5.00 par common
Wiser Oil Company, The
$3.00 par common

Additions to the List of Marginable OTC Stocks

AAON, Inc.
$.001 par common
ABC Rail Products Corporation
$.01 par common
Active Voice Corporation
No par common
Advanced Technology Materials, Inc.
$.01 par common
AFC Cable Systems, Inc.
$.01 par common
Airport Systems International, Inc.
$.01 par common
Aladdin Knowledge Systems Ltd.
Ordinary Shares, NIS .01 par value
Alliance Semiconductor Corporation
$.01 par common
Allied Capital Lending Corporation
$.0001 par common
Allied Life Financial Corporation
No par common
Alpha Microsystems
Warrants (expire 09–01–98)
American Mobile Satellite Corporation
$.01 par common
American Recreation Company Holdings Inc.
$.01 par common
American Telecasting, Inc.
$.01 par common
Amerigon Incorporated
Class A, no par common
Ameristar Casinos Inc.
$.01 par common
Amrion Inc.
$.0011 par common
Applied Innovation Inc.
$.01 par common
Applied Microbiology, Inc.
$.005 par common
Applied Science & Technology Inc.
$.01 par common
Warrants (expire 11–10–98)
Arakis Energy Corporation
No par common
Arris Pharmaceutical Corporation
$1.00 par common
Asante Technologies, Inc.
$.001 par common
Astoria Financial Corporation
$.01 par common
Atlantic Beverage Co., Inc.
$.01 par common
Bando McGlocklin Capital Corporation
Series A, $ 01 par adjustable rate cumulative preferred
Bankunited Financial Corporation (Florida)
$.01 par noncumulative perpetual preferred
Billy Blues Food Corporation
9% cumulative convertible preferred
Bioject Medical Tech Inc.
No par common
Bollinger Industries Inc.
$.01 par common
Boston Chicken
$.01 par common
Brothers Gourmet Coffees Inc.
$.0001 par common
C. Brewer Homes, Inc.
Class A, $.01 par common
Cable Design Technologies Corporation
$.01 par common
Cablemaxx Inc.
$.01 par common
Call-Net Enterprises Inc.
Class B, no par common
Capital Savings Bancorp Inc (Michigan)
$.01 par common
Cardinal Bancshares, Inc (Kentucky)

No par common
Careline, Inc.
$.0001 par common
Carson Pirie Scott & Co.
$.01 par common
CBT Corporation
No par common
Celex Group, Inc.
$.01 par common
Cellstar Corporation
$.01 par common
CHC Helicopter Corporation
Class A, subordinate voting shares
Children's Broadcasting Corporation
$.01 par common
Clintrials Inc.
$.01 par common
Club Car Inc.
$.01 par common
CMC Industries Inc.
$.01 par common
Coastal Banc Savings Association (Texas)
Series A, no par noncumulative preferred
Coflexip
American Depositary Receipts
Commerce Group, Inc., The
$.50 par common
Communications Central Inc.
$.01 par common
Conso Products Company
No par common
Consolidated Stainless Inc.
$.01 par common
Consumer Portfolio Services, Inc.
No par common
Credence Systems Corporation
$.001 par common
Crescent Airways Corporation
$.01 par common
Warrants (expire 01–10–98)
Crossmann Communities Inc.
No par common
D & N Financial Corporation
Warrants (expire 12–31–96)
Davel Communications Group Inc.
No par common
Deckers Outdoor Corporation
$.01 par common
Delta Petroleum Corporation
$.01 par common
Digidesign, Inc.
$.001 par common
DM Management Company
$.01 par common
Duracraft Corporation
No par common
Eateries, Inc.
$.002 par common
EB, Inc.
$2.00 par common
Elephant & Castle Group, Inc.
No par common
Ellett Brothers, Inc.
$.01 par common
Encad, Inc.
No par common
Encon Systems, Inc.
$.01 par common
Ensys Environmental Products Inc.
$.01 par common
Envirogen, Inc.
Warrants (expire 10–12–98)
Enviropur Waste Refining & Technology Inc.
$.01 par common
Class B warrants, (expire 12–31–94)
Evergreen Media Corporation
6% convertible exchangeable preferred
Fairfield Communities Inc.
$.01 par common
Farmers & Mechanics Bank (Connecticut)
$.01 par common
FFLC Bancorp, Inc. (Florida)
$.01 par common
Fidelity Bancorp Inc. (Illinois)
$.01 par common
Fidelity Federal Savings Bank of Florida
$1.00 par common
First Banking Company of Southeast Georgia
$1.00 par common
First Bankshares Inc. (Missouri)
$.01 par common
First Charter Bank, N.A. (California)
$2.56 par common
First Financial Bankshares, Inc. (Texas)
$10.00 par common
First Savings Bank of Moore County Inc., SSB
No par common
First State Bancorporation (New Mexico)
No par common
Flair Corporation
$.01 par common
Foamex International, Inc.
$.01 par common
Franklin Ophthalmic Instruments Co., Inc.
$.001 par common
Friedman's Inc.
Class A, $.01 par common
Frisco Bay Industries Ltd.
No par common
FTP Software Inc.
$.01 par common
Fulcrum Technologies, Inc.
No par common
Gaming Corporation of America
$.02 par common
Gateway 2000 Inc.
$.01 par common
Gibraltar Steel Corporation
$.01 par common
Globalink, Inc.
$.01 par common
Golden Systems Inc.
No par common
Granite Broadcasting Corporation
$.01 par cumulative convertible exchangeable preferred
Grasso Corporation
$.01 par common
Great American Communications Company
Class A, no par common
Greenwich Air Services Inc.
$.01 par common
Gryphon Holdings Inc.
$.01 par common
Hallmark Capital Corporation
$1.00 par common
Harbor Federal Savings Bank (Florida)
$1.00 par common
Harvard Industries Inc.
Class B, $.01 par common
$.01 par 14¼% PIK exchangeable preferred
Harvey Comics Entertainment, Inc.
No par common
Healthwise of America, Inc.
$.25 par common
Heidemij N.V.
$.05 par common (NLG)
Hi-Rise Recycling Systems, Inc.
$.01 par common
Holophane Corp.
$.01 par common
Human Genome Sciences Inc.
$.01 par common
Ico, Inc.
Depositary shares
Illinois Superconductor Corporation
$.001 par common
Innovative Gaming Corporation
$.01 par common
Warrants (expire 05–28–96)
Insignia Financial Group, Inc.
Class A, $.01 par common
Insilco Corporation
$.001 par common
Insite Vision Inc.
$.01 par common
Integracare Inc.
$.001 par common
Integrated Process Equipment Corporation
$.01 par common
Intelligent Surgical Lasers, Inc.
Warrants A, (expire 11–17–2000)
Warrants B, (expire 11–17–2000)
Interfilm, Inc.
$.01 par common
Interlink Electronics
No par common
International Fast Food Corporation
$.01 par common
International Semi-Tech Microelectronics
Class A, sub-voting shares
Interpore International
No par common
Itron, Inc.
No par common
Iwerks Entertainment Inc.
$.001 par common
Jacor Communications Inc.
$.10 par common
Warrants (expire 01–14–2000)
Jasmine Ltd.
$.001 par common
Jetform Corporation
No par common
JPE, Inc.
No par common
Kaman Corporation
Depositary Shares
Kentucky Enterprise Bancorp, Inc.
$.01 par common
Koala Corporation
$.10 par common
Koo Koo Roo, Inc.
$.01 par common
Lakeview Savings Bank (New Jersey)
$2.00 par common
Landair Services Inc.
$.01 par common
Lodgenet Entertainment Corporation
$.01 par common
London & Overseas Freighters Limited
American Depositary Receipts
Lone Star Casino Corporation
$.001 par common
Louisville Gas and Electric Company
5% preferred stock
M.G. Products, Inc.
No par common
Mace Security International Inc.
$.01 par common
Macromedia, Inc.
$.001 par common
Main Street Community Bancorp, Inc.
$.01 par common
Martek Biosciences Corporation
$.10 par common
Masland Corporation
$.01 par common
Merchants Bancorp, Inc. (Illinois)

$1 00 par common
Mercury Interactive Corporation
$.002 par common
Mikohn Gaming Corporation
$.10 par common
Millicom International Cellular S.A.
$2.00 par common
MK Gold Company
$.01 par common
Monaco Finance, Inc.
Class A, $.01 par common
Class B, warrants (expire 12–11–95)
Monterey Pasta Company
No par common
Mountasia Entertainment International Inc.
No par common
MRI Management Associates, Inc.
$.001 par common
Mutual Federal Savings Bank of Miamisburg
$1.00 par common
N–Viro International Corporation
$.01 par common
National Dentex Corporation
$.01 par common
Navarre Corporation
No par common
NDC Automation, Inc.
$.01 par common
Network Imaging Corporation
$.0001 par common
$.0001 par preferred
Warrants (expire 05–07–97)
New World Power Corporation
$.01 par common
North Bancshares Inc. (Illinois)
$.01 par common
Ocean Optique Distributors, Inc.
No par common
Odetics, Inc.
Class A, $.10 par common
Class B, $.10 par common
Old Second Bancorp Inc. (Illinois)
No par common
Olympic Financial Ltd. (Minnesota)
8% cumulative convertible exchangeable preferred
OM Group Inc.
$.01 par common
Opinion Research Corporation
$.01 par common
Oxford Resources Corporation
Class A, $.01 par common
P.A.M. Transportation Services Inc
$.01 par common
Pacific Crest Capital Inc.
$.01 par common
Parkervision, Inc.
$.01 par common
Partnerre Holdings Ltd.
$1.00 par common
Patterson Energy Inc.
$.01 par common
Warrants (expire 11–02–95)
Penederm Inc.
No par common
Penn-America Group, Inc.
$.01 par common
Perseptive Technologies II Corporation
Units (expire 12–31–95)
Petrocorp Incorporated
$.01 par common
Petstuff Inc.
$.01 par common
Pharmhouse Corporation
No par common
Pharmos Corporation
$.03 par common
Photonics Corporation
$.001 par common
Physicians Insurance Company of Michigan
$1.00 par common
Piemonte Foods Inc.
No par common
Pinpoint Retail Solutions, Inc.
No par common
Planar Systems, Inc.
No par common
PMC Commercial Trust
Shares of beneficial interest
Pollo Tropical, Inc.
$.01 par common
Positron Corporation
$.01 par common
Warrants (expire 12–02–98)
Premiere Page, Inc.
$.01 par common
Proxim, Inc.
$.001 par common
PSB Holdings Corporation
$.01 par common
Purus, Inc.
$.001 par common
Quaker City Bancorp, Inc. (California)
$.01 par common
Quaker Fabric Corporation
$.01 par common
Queens County Bancorp, Inc. (New York)
$.01 par common
Quickturn Design Systems, Inc.
$.001 par common
Racotek, Inc.
$.01 par common
Railtex, Inc.
$.10 par common
Republic Security Financial Corporation (Florida)
Series A, 7.5% cumulative convertible preferred
RGB Computer & Video, Inc.
No par common
Rimage Corporation
Warrants (expire 07–21–95)
Roberds Inc.
No par common
Robotic Vision Systems, Inc.
$.01 par common
Royce OTC Micro-Cap Fund, Inc.
$.001 par common
Safeskin Corporation
$.01 par common
Sangstat Medical Corporation
No par common
Schnitzer Steel Industries Inc.
Class A, $1.00 par common
Search Capital Group, Inc.
$.01 par common
Security Capital Corporation (Wisconsin)
$1.00 par common
Seda Specialty Packaging Corporation
No par common
Shaw Group Inc., The
$.01 par common
Skybox International Inc.
$.01 par common
Sonoco Products Company
Series A, cumulative convertible preferred
Soricon Corporation
$.01 par common
Southwest Bancorp, Inc. (Oklahoma)
$1.00 par common
Speciality Equipment Companies Inc.
$.01 par common
Spectral Diagnostics Inc.
No par common
Spreckels Industries, Inc.
Class A, $.01 par common
Stacey's Buffet, Inc.
Warrants (expire 11–12–98)
State Bancshares Inc. (Pennsylvania)
$1.00 par common
Stimsonite Corporation
$.01 par common
Submicron Systems Corporation
$.0001 par common
Summa Industries, Inc.
No par common
Sunbelt Companies, Inc., The
$.01 par common
Sutton Resources, Ltd.
No par common
Sylvan Learning Systems Inc.
$.01 par common
Tat Technologies Ltd.
Ordinary shares, NIS (0.15 par common)
Class A, warrants (expire 03–31–94)
Tee-Comm Electronics Inc.
No par common
Temtex Industries, Inc.
$.20 par common
TFC Enterprises, Inc.
$.01 par common
Tower Air Inc.
$.01 par common
Transnational Re Corporation
Class A, $.01 par common
Triad Guaranty Inc.
$.01 par common
Triquint Semiconductor, Inc.
No par common
U.S. Wireless Data, Inc.
Class A, $.01 par common
Ultimate Electronics Inc.
$.01 par common
Union Switch & Signal Inc.
$.01 par common
Uniphase Corporation
$.001 par common
United Video Satellite Group, Inc.
Class A, $.01 par common
Universal Forest Products Inc.
No par common
Urban Outfitters Inc.
$.0001 par common
Veritas Software Corporation
No par common
Viagene, Inc.
$.001 par common
Visx, Incorporated
$.01 par common
Wang Laboratories, Inc.
$.01 par common
Warrants (expire 07–02–2000)
Welbilt Corporation
$.01 par common
West Marine, Inc.
$.001 par common
Westerfed Financial Corporation
$.01 par common
White River Corporation
$.01 par common
Wickes Lumber Company
$.01 par common
WRT Energy Corporation
$.01 par common
9% convertible preferred
WVS Financial Corporation
$.01 par common
Zoltek Companies, Inc.
$.01 par common
Zytec Corp

No par common

Additions to the List of Foreign Margin Stocks

Cheung Kong Holdings Ltd.
HK$.50 par ordinary shares
China Light & Power Co., Ltd.
HK$5.00 par ordinary shares
Daifuku Company
¥50 par ordinary shares
Dairy Farm International Holdings Ltd.
HK$.05 par ordinary shares
Guoco Group Ltd.
HK$.50 par ordinary shares
Hang Lung Development Company
HK$1.00 par ordinary shares
Hang Seng Bank Ltd.
HK$5.00 par ordinary shares
Henderson Land Development Co., Ltd.
HK$2.00 par ordinary shares
Hong Kong Electric Holding Ltd.
HK$1.00 par ordinary shares
Hong Kong Land Holdings Ltd.
HK$.10 par ordinary shares
Hong Kong Telecommunications Ltd.
HK$.50 par ordinary shares
HSBC Holdings PLC
HK$.50 par ordinary shares
Hutchinson Whampoa Ltd.
HK$.25 par ordinary shares
Hysan Development Co., Ltd.
HK$5.00 par ordinary shares
Jardine Strategic Holdings Ltd.
HK$.05 par ordinary shares
Sun Hung Kai Properties Ltd.
HK$.50 par ordinary shares
Swire Pacific Ltd.
A shares, par HK$.60
Wharf Holdings Ltd.
HK$1.00 par ordinary shares

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–2253 Filed 1–31–94; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

Disclosure of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule will amend the Small Business Administration (SBA) regulation which lists the Agency's Systems of Records that are specifically exempted from designated sections of the Privacy Act of 1974, 5 U.S.C. 552a. SBA is amending these regulations to reflect revisions to SBA's Systems of Records.

DATES: This rule is effective February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Beverly K. Linden, Chief, Freedom of Information/Privacy Acts Office, U.S. Small Business Administration, 409 Third Street, SW. Washington, DC 20416, (202) 653–6460.

SUPPLEMENTARY INFORMATION: SBA is hereby amending its regulations which delineate those Systems of Record which are specifically exempted from designated provisions of the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, SBA is amending 13 CFR 102.35 to update those Systems which are currently included in the Code of Federal Regulations and to add two new Systems of Record to that list. These amendments reflect recent revisions to the Agency's System of Records.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if this rule constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

SBA is publishing this rule governing agency organization, practice, and procedure as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 102

Freedom of information, Privacy.

For the reasons set out in the preamble, part 102 of title 13, Code of Federal Regulations is amended as follows:

PART 102—[AMENDED]

1. The authority citation for part 102 continues to read as follows:

Authority: The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*); the Privacy Act of 1974 (5 U.S.C. 552a); 18 U.S.C. 4203 (a)(1); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et seq.*); Executive Order 12600, 52 FR 23781 (1987).

2. Section 102.35(a), is revised to read as follows:

§ 102.35 Specific exemptions.

(a) Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2), or 5 U.S.C. 552a(k)(5), or both.

(1) Audit Reports—SBA 015, a system containing investigations concerning the use of funds by recipients of disaster home loans;

(2) EEO Complaint Cases Files—SBA 050, a system containing information concerning Equal Employment Opportunity complaint cases;

(3) Litigation and Claims File—SBA 070, a system containing information concerning recipients of disaster home loans and other individuals who are parties to lawsuits or claims involving SBA;

(4) Personnel Security Files—SBA 100, a system containing background information on active and inactive SBA employees;

(5) Security and Investigations Files—SBA 120, a system which contains information on individuals seeking or receiving SBA assistance, individuals involved in businesses or other organizations seeking or receiving such assistance, representatives of applicants for SBA assistance, members of advisory councils, and SCORE/ACE volunteers. This system also includes information relating to referrals for investigation of possible misconduct by SBA employees, and individuals involved in seeking or obtaining SBA assistance;

(6) Standard of Conduct Files—SBA 140, a system containing information concerning outside employment and financial interests of SBA employees, conduct of SBA employees, and related matters; and

(7) Civil Rights Compliance Files—SBA 165, a system containing information developed in investigating an allegation of discrimination and other information related to the processing of a complaint of discrimination.

* * * * *

Dated: December 6, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–2238 Filed 1–31–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–116–AD; Amendment 39–8795; AD 94–01–13]

Airworthiness Directives; de Havilland Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–300 series airplanes, that requires modifying the airplane fire detection system and revising the Airplane Flight Manual (AFM) to include procedures related to operating the system. This amendment is prompted by reports of several oil fires in the inter compressor case (ICC) assembly. The actions specified by this AD are intended to prevent severe structural damage to the airplane due to an internal engine fire within the ICC.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE–174, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11582; telephone (516) 791–7422; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–300 series airplanes was published in the **Federal Register** on September 29, 1993 (58 FR 50868). That action proposed to require the installation of an inter compressor case (ICC) fire detection system, connection of the ICC fire detection system to the airplane fire detection system, and a revision to the AFM to provide the flight crew with operating procedures associated with the ICC fire detection system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to 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.

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $985 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $28,120, or $1,480 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 adding the following new airworthiness directive:

94–01–13 De Havilland, Inc.: Amendment 39–8795. Docket 93–NM–116–AD.

Applicability: Model DHC–8–301, –311, and –314 series airplanes, serial numbers 100 through 332 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe structural damage to the airplane due to an internal engine fire within the inter compressor case, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Install an inter compressor case (ICC) fire detection system in accordance with de Havilland Service Bulletin S.B. 8–26–14, dated March 6, 1992.

(2) Connect the ICC fire detection system to the airplane fire detection system in accordance with de Havilland Service Bulletin S.B. 8–26–14, dated March 6, 1992.

(3) Revise Section 4, "Abnormal Procedures", Page 4–10–1, of the FAA-approved Airplane Flight Manual (AFM), by adding the following steps immediately after step 1 of paragraph 4–10, "Engine Fire Detection System Failures". This may be accomplished by inserting a copy of this AD in the AFM.

"For aircraft incorporating de Havilland Modification 8/1835
2. FAULT A advisory light illuminates—Land as soon as practicable."

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(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.

(d) The installation and connection shall be done in accordance with de Havilland Service Bulletin S.B. 8–26–14, dated March 6, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–453 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–44; Amendment 39–8785; AD 94–01–03]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–200, S–600, and S–1200 Series Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, that currently requires replacement of certain Bendix ignition coils and rotating magnets that have accumulated 2000 or more hours time in service (TIS). This amendment requires replacing Bendix ignition coils and rotating magnets, regardless of total TIS, with improved TCM ignition coils, rotating magnets and marking magnetos to indicate compliance with this AD, except for the S–1200 series magnetos on which the AD requires replacing only the ignition coils as that series magneto already incorporates rotating magnetos with the improved TCM design. This amendment is prompted by recent reports of accidents caused by failures of magnetos incorporating older Bendix components that had not been replaced in accordance with the current AD. The actions specified by this AD are intended to prevent magneto failure and subsequent engine failure.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 73–07–04, Amendment 39–1731 (38 FR 27600, October 5, 1973), which is applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, was published in the **Federal Register** on July 23, 1993 (58 FR 39476). That action proposed to require replacing certain Bendix ignition coils and rotating magnets, regardless of time in service (TIS), with improved serviceable TCM ignition coils and rotating magnets at either the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of the AD, whichever occurs first. For S–1200 series magnetos, the AD proposed to require replacing only the ignition coils as the rotating magnets on that series magneto already incorporates the improved TCM design. Additionally, the proposed AD would require remarking magnetos to indicate compliance with this AD. The inspection, replacement, if necessary, and remarking would be accomplished in accordance with TCM Service Bulletin (SB) No. 637, dated December 1992.

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

One commenter concurs with the rule as proposed.

One commenter, the manufacturer, states that the AD should be listed under both "Bendix" and "Teledyne Continental Motors" headings within the Appliance Section of the Airworthiness Directives listing Small Aircraft and Rotorcraft, Federal Aviation Regulations, part 39. Operators may miss an AD listed only under TCM. The FAA concurs. When the next complete revision of the listing is published, all current Bendix AD's will be cross-referenced under TCM.

In addition, the manufacturer also comments that the Applicability section of the AD is possibly misleading. Up to the end of 1969, Bendix used a sequential serial numbering system with no letter prefix for all new service magnetos (those with black or red data plates); for example: 234561 and 1040136. Early in 1970, Bendix added the "A" prefix and started with a low serial number; for example: A00100. This numbering convention continued up to at least serial number A297043 for all new service magnetos manufactured by Bendix in Sidney, New York. When Bendix moved to Jacksonville, Florida, a "B" prefix was added and the serial numbers again started from a low value; for example: B00249. Currently TCM uses the letters "A" through "L" to prefix the serial numbers of their products. Therefore, the wording of the Applicability section in the proposed rule is incorrect. The FAA concurs and the Applicability section has been revised in this final rule.

Finally, the manufacturer's comment states that the use of the word "all" in several places in the proposed rule can easily be misinterpreted to mean every Bendix coil and rotating magnet ever made must be replaced, while the AD applies only to some coils. The FAA concurs. Bendix supplied acceptable as well as unacceptable coils and rotating magnets. This AD is applicable only to the magnetos identified by serial number in the Applicability section. The word "all" has been deleted from this final rule.

In addition, the FAA has determined that operators that have complied with AD 73–07–04 by replacing rotating magnets and coils in accordance with TCM SB No. 637, dated December 1992, are considered to be in compliance with this AD, and no further action is required.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 20,000 magnetos installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per magneto to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $700 per magneto. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,100,000.

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 39–1731 (38 FR 27600, October 5, 1973) and by adding a new airworthiness directive, Amendment 39–8785, to read as follows:

94–01–03 Teledyne Continental Motors: Amendment 39–8785. Docket 93–ANE–44. Supersedes AD 73–07–04, Amendment 39–1731.

Applicability: Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, and S–600 series magnetos with red or black Bendix (not TCM) data plates having serial numbers without any letter prefix, or serial numbers lower than A16058 having the letter "A" prefix; S–20, S–200, S–600, and S–1200 series magnetos with blue Bendix (not TCM) data plates having serial number 901001 and lower; and S–1200 series magnetos with red Bendix (not TCM) data plates having serial numbers without any letter prefix, or serial numbers lower than A132844 having the letter "A" prefix. These magnetos are installed on but not limited to reciprocating engine powered aircraft manufactured by Beech, Cessna, Maule, Mooney, and Piper.

Compliance: Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) For TCM (formerly Bendix) S–20, S–200, and S–600 series magnetos, replace Bendix ignition coils and rotating magnets identified in the Detailed Instructions of TCM Service Bulletin (SB) No. 637, dated December 1992, with appropriate serviceable ignition coils and rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours time in service (TIS) after the effective date of this AD, whichever occurs first.

(b) For TCM (formerly Bendix) S–1200 series magnetos, replace Bendix ignition coils identified in the Detailed Instructions of TCM SB No. 637, dated December 1992, with appropriate serviceable ignition coils at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The rotating magnets on the S–1200 series magnetos already incorporate the improved TCM design.

(c) After compliance with paragraphs (a) or (b) of this AD, as applicable, and prior to further flight, mark the magneto in accordance with the Identification Instructions of TCM SB No. 637, dated December 1992.

(d) 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, Atlanta Aircraft 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, Atlanta Aircraft Certification Office.

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

(e) 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.

(f) The replacement shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM SB No. 637. Total pages: 2	1–2	Original ...	Dec. 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 3, 1994.

Issued in Burlington, Massachusetts, on December 29, 1993.

Jay J. Pardee,

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

[FR Doc. 94–590 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–113–AD; Amendment 39–8800; AD 94–02–03]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes that requires replacement of the existing attachment bolts on the horizontal stabilizer with new, improved bolts having a longer fatigue life. This amendment is prompted by a report that certain attachment bolts on the horizontal stabilizer were not properly treated on the surface during production, resulting in reduced fatigue life. The actions specified by this AD are intended to prevent corrosion and subsequent fatigue-related cracking of the attachment bolts on the horizontal stabilizer, which could lead to loss of stabilizer control.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on September 1, 1993 (58 FR 46136). That action proposed to require replacement of the existing bolts that attach the link assemblies on the dual actuator to the drive bracket on the horizontal stabilizer with improved bolts having a longer fatigue life, and performance of a functional test.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests withdrawal of the proposal. The commenter notes that only 20 airplanes in the U.S.-registered fleet would be affected by the proposed rule and that the proposed bolt replacement has already been accomplished on 5 U.S.-registered airplanes. The commenter also notes that the proposed actions will be performed on the 15 remaining airplanes in the U.S.-registered fleet, prior to the proposed compliance time of 13,500 total landings. Therefore, the commenter does not believe that an AD is necessary. The FAA does not agree. Issuance of this AD is necessary in order to ensure compliance for the remaining unmodified airplanes in the U.S.-registered fleet. Also, although the current U.S.-registered fleet size is relatively small, issuance of this AD will ensure accomplishment of the requirements on any affected airplane currently of foreign registry that is purchased by a U.S. operator and placed on the U.S. register in the future.

The same commenter also requests that an operational test of the horizontal stabilizer be accepted as an alternative to the lengthy proposed functional test, in the event that the FAA decides not to withdraw the proposed AD. The commenter asserts that bolt replacement would not affect horizontal stabilizer adjustment or rigging and therefore, the proposed functional test procedure is unnecessary. The commenter adds that Fokker has indicated that the operational test is acceptable, in lieu of the proposed functional test. The FAA does not concur, since the commenter did not submit enough data for the FAA to evaluate the proposed alternative method of compliance. However, the FAA may consider approval of an alternative method of compliance, in accordance with paragraph (c) of this AD, if such data were provided to justify the request and the operational test procedure is defined or referenced.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 11 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,100 per airplane. Based upon these figures, the total cost impact of the AD on U.S. operators is estimated to be $34,100, or $1,705 per airplane.

The FAA has been advised that 5 U.S.-registered airplanes have been modified in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $25,575.

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 adding the following new airworthiness directive:

94–02–03 Fokker: Amendment 39–8800. Docket 93–NM–113–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11300 inclusive, 11303, 11306, 11308, 11310, and 11312 through 11314 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent corrosion and subsequent fatigue-related cracking of the attachment bolts on the horizontal stabilizer, which could lead to loss of stabilizer control, accomplish the following:

(a) Prior to the accumulation of 13,500 total landings or within 12 months after the effective date of this AD, whichever occurs later, replace the two existing bolts, part number D03000–017, that attach the link assemblies on the dual actuator to the drive bracket of the horizontal stabilizer, with new, improved bolts, part number DO3000–021; and perform a functional test; in accordance with Fokker Service Bulletin SBF100–27–037, dated April 3, 1992.

(b) As of the effective date of this AD, no person shall install an attachment bolt, part number D03000–017, on the horizontal stabilizer on any airplane.

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

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

(e) The replacement and function shall be done in accordance with Fokker Service Bulletin SBF100–27–037, dated April 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 12, 1994.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–1228 Filed 1–31–94; 8:45 am]

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14 CFR Part 39

[Docket No. 92–NM–173–AD; Amendment 39–8792; AD 94–01–10]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. This amendment adds a requirement for installation of an additional thrust reverser system locking feature; revises the compliance time for accomplishing the modification; adds airplanes to the applicability; and requires periodic functional tests of the locking feature following its installation. This amendment is prompted by results of a safety review of the thrust reverser system on these airplanes. The actions specified by this AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Effective March 3, 1994.

The incorporation by reference of Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, and Boeing Service Bulletin 757–78–0028, Revision 2, dated January 14, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of March 3, 1994.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of September 16, 1991 (56 FR 46725, September 16, 1991).

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–20–09, Amendment 39–8043 (56 FR 46725, September 16, 1991), which is applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on August 6, 1993 (58 FR 42034). The action proposed to require certain inspections, adjustments, and functional checks of the engine thrust reverser system; modification of the engine thrust reverser directional control valve; installation of an additional thrust reverser system locking feature (sync lock); and periodic functional tests of the locking feature following its installation.

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

One commenter supports the proposed rule.

One commenter requests that paragraph (e) of the proposed rule be revised to require only the "sync lock test" portion of the proposed functional test. The commenter indicates that the proposed "Thrust Reverser Auto Restow and Sync Lock Test" is a combination test procedure that consists of an auto restow test of the entire thrust reverser assembly and a test of the sync lock mechanism. The commenter believes that this combination test procedure is more extensive than that which is necessary to verify proper functioning of the sync lock.

The FAA concurs with the commenter's request. The FAA's objective in proposing periodic functional tests of the sync lock device is to ensure the integrity of the locking function. The FAA included the auto restow portion of the functional test in the proposal because the airplane maintenance manual does not distinguish between the sync lock test and the auto restow test. However, since issuance of the proposal, Boeing has submitted to the FAA separate procedures for accomplishment of the sync lock integrity test described in the airplane maintenance manual. These procedures are accomplished independently of the auto restow test and other thrust reverser system tests. Accordingly, the FAA has revised paragraph (e) of the final rule to remove the requirement to accomplish the auto restow portion of the functional test and to specify instructions for accomplishment of the sync lock integrity test only.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the FAA review its justification for including in an AD the functional test requirements proposed in paragraph (e). ATA members are not opposed to accomplishing the proposed tests as part of their maintenance programs, but are opposed to accomplishing the tests as part of the requirements of this AD. The commenters believe that the adoption of paragraph (e), as proposed, is equivalent to issuing a Certification Maintenance Requirements (CMR) item by means of an AD.

The FAA does not concur. The FAA acknowledges that similarities exist between the periodic functional tests of the sync lock, as required by paragraph (e) of this AD, and tasks denoted as CMR items. The extent of those similarities is that both CMR items and the periodic functional tests required by this AD place specific requirements on operators of Model 757 series airplanes

with respect to scheduling airplane maintenance activities.

Generally, CMR items define specific repetitive inspections or component replacements for equipment, systems, and installations. Accomplishment of these CMR items ensures that the likelihood of certain failures that could occur during operation of the airplane does not exceed the limitations specified in Federal Aviation Regulations (FAR) 25.1309, which is applicable to the design and approval of transport category airplanes.

These CMR items are identified as a result of safety analyses of airplane electrical, electronic, pressurization, and propulsion systems. These analyses must be completed and approved by the FAA prior to its issuance of an airplane Type Certificate (TC). Following issuance of the TC, other necessary inspections, component replacements, or overhaul intervals for airplane systems that are based on in-service experience with the airplane, but that do not result in re-evaluation of the basic safety analysis on which approval of the system is based, are not included as additional CMR items; rather, these are addressed through changes to the airplane maintenance program or as the subjects of AD's.

In conclusion, while the effect of a CMR item is the same as that of an AD requirement, its derivation is different. A CMR item is based on a statistical analysis required by FAR 25.1309; an AD requirement is based on follow-up work that is necessary to address an unsafe condition that is likely to exist or develop on other airplanes of the same type design.

This AD addresses an unsafe condition identified as deployment of a thrust reverser during flight, and requires the installation of an additional thrust reverser system locking feature to correct that unsafe condition. The periodic functional tests contained in paragraph (e) of this AD are not the result of a re-evaluation of the safety analyses for Model 757 series airplanes with respect to FAR 25.1309 requirements. These tests have been established to ensure the effectiveness of the modification required to address the identified unsafe condition. The FAA considers issuance of this AD to be necessary, since AD's are the means by which accomplishment of procedures and adherence to specific compliance times are made mandatory.

ATA states further that, if the FAA finds sufficient justification to include the functional test requirements in this AD, an alternative to accomplishing paragraph (e) should be provided in the final rule. That alternative would include the following:

1. Within 3 months after accomplishing the sync lock installation, operators would be required to revise the FAA-approved maintenance inspection program to include a functional test of the sync lock. The initial test would be accomplished within 1,000 hours time-in-service after modification. This AD would no longer be applicable for operators that have acceptably revised the maintenance program.

2. Operators complying with this suggested alternative could use an alternative recordkeeping method in place of that otherwise required by FAR 91.417 or 121.380.

3. For operators complying with this suggested alternative, the FAA would be defined as the cognizant Principal Maintenance Inspector (PMI).

ATA reasons that its suggested alternative to accomplishing paragraph (e) of this AD is justified because no data exist to show that repetitive tests of a modified thrust reverser cannot be handled adequately through an operator's maintenance program.

The FAA does not concur. As discussed previously, the FAA has determined that repetitive functional tests are necessary to ensure that the sync lock modification is effective in preventing the identified unsafe condition. This determination is based on the fact that the sync lock is a new design whose reliability has not been adequately proven through service experience. The ATA's proposal would enable each operator to determine whether and how often these tests should be conducted. In light of the severity of the identified unsafe condition, the FAA has determined that allowing this degree of operator discretion is inappropriate at this time. However, as the FAA obtains further information with regard to in-service experience, it may consider revising the requirements of paragraph (e) of this AD based on that new data.

One commenter, Boeing, opposes the requirement contained in paragraph (e) of the proposal for periodic functional tests of the sync lock following accomplishment of the sync lock installation, and proposes that the paragraph be removed until the FAA reviews the "more comprehensive" scheduled maintenance recommendations developed by the Model 757/767 Thrust Reverser Working Group (TRWG). Boeing indicates that these more comprehensive tests will be recommended for maintenance of the thrust reverser system in the next revision to the Maintenance Review Board (MRB) report. Boeing also adds that the proposed interval at which the tests specified in paragraph (e) of this AD must be accomplished will be inconsistent with the next revision to the MRB report.

Boeing states that any scheduled maintenance requirements for airplanes on which the sync lock installation has been accomplished should be presented at a Model 757 Industry Steering Committee meeting with the FAA, which is scheduled for December 1993. Boeing adds that, contingent upon FAA approval, recommendations developed by the TRWG will be included in Revision D to the MRB report, which will be published in the first quarter of 1994. Boeing believes that adoption of the maintenance recommendations contained in the forthcoming revision to the MRB report will ensure that an adequate level of safety, with regard to the sync lock installation, will be maintained by all operators of Model 757 series airplanes.

The FAA does not concur with the commenter's request. The FAA finds that addressing the sync lock integrity test in a recommended action, such as the MRB report, will not ensure an acceptable level of safety with regard to the thrust reverser maintenance program. The FAA has determined that requiring the periodic functional tests of the sync lock integrity in this AD will provide an adequate level of safety.

The FAA recognizes that differences exist currently where this AD requires that the sync lock integrity test be accomplished at more frequent intervals than those currently proposed by Boeing for inclusion in the MRB report. However, the FAA has determined that the test interval of 4,000 hours time-in-service, which will be recommended by Boeing for inclusion in the next revision to the MRB report, is too long in light of the sync lock function and the limited information available to substantiate in-service experience of the sync lock. Consequently, the FAA has based the requirement for accomplishment of the test at intervals of 1,000 hours time-in-service, as specified in paragraph (e) of this AD, on a philosophy that will ensure that all affected operators will accomplish a common sync lock integrity test at common intervals.

The FAA anticipates that when the revised MRB report is issued in early 1994, that revision will contain a recommendation for accomplishment of the sync lock integrity test that is consistent with the requirements of paragraph (e) of this AD, thereby

allowing the MRB to be consistent with AD-required actions.

Several commenters request that the repetitive interval for functional tests of the sync lock installation be increased from the proposed 1,000 hours time-in-service to 3,000 hours time-in-service. One commenter states that, according to results of a check of the sync lock installation accomplished by Boeing, the proposed 1,000-hour functional test was intended to be accomplished only on Model 767 series airplanes due to physical changes between the sync lock systems installed on Model 757 and 767 series airplanes. One commenter reasons that the proposed interval for functional tests of the sync lock device should be 3,000 hours time-in-service because AD 91–20–09 (which will be superseded by this proposed AD) specifies a 3,000-hour interval for inspections and tests of the thrust reverser system.

The FAA does not concur with the commenters' request. The test interval specified in this AD is reduced from the interval specified in AD 91–20–09 because only limited information is available currently to substantiate the in-service reliability of the sync lock device. Consequently, the FAA has established an appropriate functional test interval to ensure all affected operators will accomplish a common sync lock integrity test at common intervals not to exceed 1,000 hours time-in-service.

"Note 2" of this final rule has been revised to state that paragraph "(c)" of this AD restates the requirement for repetitive inspections contained in paragraph (d) of AD 91–20–09, Amendment 39–8043. An incorrect reference to paragraph "(d)" of this AD was made in "Note 2" of the supplemental NPRM.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 211 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 192 airplanes of U.S. registry will be affected by this AD, that it will take approximately 624 work hours per airplane to accomplish the required modification, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators to accomplish the required modification is estimated to be $6,589,440, or $34,320 per airplane.

The FAA recognizes that the required modification (sync lock installation) entails a large number of work hours to accomplish. However, the 5-year compliance time specified in paragraph (d) of this AD should allow ample time for the sync lock installation to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

In addition, the FAA estimates that 270 airplanes of U.S. registry will be required to accomplish the periodic functional tests required by this AD, that it will take approximately 1 work hour per airplane to accomplish each functional test, 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 to accomplish each functional test is estimated to be $14,850, or $55 per airplane.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,604,290. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 39–8043 (56 FR 46725, September 16, 1991), and by adding a new airworthiness directive (AD), amendment 39–8792, to read as follows:

94–01–10 Boeing: Amendment 39–8792. Docket 92–NM–173–AD. Supersedes AD 91–20–09, Amendment 39–8043.

Applicability: Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (b) of this AD restate the requirements of AD 91–20–09, Amendment 39–8043, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–20–09 have been accomplished previously, paragraphs (a) and (b) of this AD do not require those actions to be repeated.

Note 2: Paragraph (c) of this AD restates the requirement for repetitive inspections contained in paragraph (d) of AD 91–20–09, Amendment 39–8043. Paragraph (c) of this AD requires that the first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph (d) of AD 91–20–09.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. Prior to further flight, correct any discrepancy found in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Prior to further flight, correct any discrepancy found in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

(d) Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, or Revision 2, dated January 14, 1993.

(e) Within 1,000 hours time-in-service after installing the sync lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform functional tests of the sync lock in accordance with the "Thrust Reverser Sync Lock Integrity Test" procedures specified below. If any discrepancy is found during any test, prior to further flight, correct it in accordance with procedures described in the Boeing 757 Maintenance Manual.

"Thrust Reverser Sync Lock Integrity Test

1. *General*
   A. Use this procedure to test the integrity of the thrust reverser sync locks.
2. *Thrust Reverser Sync Lock Test*
   A. Prepare for the Thrust Reverser Sync Lock Test.
   (1) Open the AUTO SPEEDBRAKE circuit breaker on the overhead circuit breaker panel, P11.
   (2) Do the steps that follow to supply power to the thrust reverser system:
   (a) Make sure the thrust levers are in the idle position.

Caution: Do not extend the thrust reverser while the core cowl panels are open. Damage to the thrust reverser and core cowl panels can occur.

   (b) Make sure the thrust reverser halves are closed.
   (c) Make sure the core cowl panels are closed.
   (d) Put the EEC maint power switch or the EEC power L and EEC power R switches to the Altn position.
   (e) For the left engine:
   (1) Put the EEC MAINT CHANNEL SEL L switch to the AUTO position.
   (2) Put the L ENG fire switch to the NORM position.
   (f) For the right engine:
   (1) Put the EEC MAINT CHANNEL SEL R switch to the AUTO position.
   (2) Put the R ENG fire switch to the NORM position.
   (g) Make sure the EICAS circuit breakers (6 locations) are closed.

Warning: The thrust reverser will automatically retract if the electrical power to the EEC/thrust reverser control system is turned off or if the EEC maint power switch is moved to the norm position. The accidental operation of the thrust reverser can cause injury to persons or damage to equipment can occur.

   (h) Make sure these circuit breakers on the main power distribution panel, P6, are closed:
   (1) Fuel cond cont L
   (2) Fuel cond cont R
   (3) T/L interlock L
   (4) T/L interlock R
   (5) Left T/R sync lock
   (6) Right T/R sync lock
   (7) L eng electronic engine control altn pwr (if installed)
   (8) R eng electronic engine control altn pwr (if installed)
   (i) Make sure these circuit breakers on the overhead circuit breaker panel, P11, are closed:
   (1) Air/gnd sys 1
   (2) Air/gnd sys 2
   (3) Landing gear pos sys 1
   (4) Landing gear pos sys 2
   (j) For the left engine, make sure these circuit breakers on the P11 panel are closed:
   (1) Left engine pdiu
   (2) Left engine thrust reverser cont/scav press
   (3) Left engine electronic engine control altn pwr (if installed)
   (4) Left engine thrust reverser pri cont
   (5) Left engine thrust reverser sec cont
   (k) For the right engine, make sure these circuit breakers on the P11 panel are closed:
   (1) Right engine pdiu
   (2) Right engine thrust reverser cont/scav press
   (3) Right engine electronic engine control altn pwr (if installed)
   (4) Right engine thrust reverser pri cont
   (5) Right engine thrust reverser sec cont
   (l) Supply electrical power.
   (m) Remove the pressure from the left (right) hydraulic system.
   B. Do the Thrust Reverser Sync Lock Test.
   (1) Move and hold the manual unlock lever on the center actuator on both thrust reverser sleeves to the unlock position.
   (2) Make sure the thrust reverser sleeves did not move.
   (3) Move the left (right) reverser thrust lever up and rearward to the idle detent position.
   (4) Make sure both thrust reverser sleeves move aft (approximately 0.15 to 0.25 inch).
   (5) Release the manual unlock lever on the center actuators.

Warning: Make sure all persons and equipment are clear of the area around the thrust reverser. When you apply hydraulic pressure the thrust reverser will extend and can cause injuries to persons or damage to equipment.

   (6) Pressurize the left (right) hydraulic system.
   (7) Make sure the thrust reverser extends.
   (8) Move the left (right) reverser thrust lever to the fully forward and down position to retract the thrust reverser.
   C. Put the Airplane Back to its Usual Condition.
   (1) Remove hydraulic pressure.
   (2) Close the left and right fan cowls.
   (3) Close the AUTO SPEEDBRAKE circuit breaker on the P11 panel.
   (4) Remove electrical power if it is not necessary.
   D. Repeat the Thrust Reverser Sync Lock Test on the other engine."

(f) Installation of the sync lock, as required by paragraph (d) of this AD, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

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

Note 3: Approvals of alternative methods of compliance issued for AD 91–20–09 constitute valid approvals for compliance with the requirements of paragraphs (a) through (c) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) 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.

(i) The actions shall be done in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991; Boeing Service Bulletin 757–78–0025, dated September 9, 1991; Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991; Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992; and Boeing Service Bulletin 757–78–0028, Revision 2, dated January 14, 1993. The incorporation by reference of Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991; Boeing Service Bulletin 757–78–0025, dated September 9, 1991; Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991; was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR

part 51 as of September 16, 1991 (56 FR 46725, September 16, 1991). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–346 Filed 1–31–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–119–AD; Amendment 39–8793; AD 94–01–11]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Model A320 series airplanes, that requires visual inspections and end-float checks of the ram air turbine (RAT), and replacement of the RAT, if necessary. This amendment is prompted by a report that, during an on-ground functional test of the RAT, the RAT broke away from its support leg. The actions specified by this AD are intended to prevent the RAT from breaking away from its support leg, which could damage the airplane structure and systems, and could injure ground personnel.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Airbus Model A320 series airplanes was published in the **Federal Register** on October 5, 1993 (58 FR 51793). That action proposed to require detailed visual inspections and end-float checks of the RAT, and replacement of the RAT with a new RAT, if necessary.

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

All of the commenters support the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections and checks, 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 $4,070, or $55 per airplane, per inspection/check. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 adding the following new airworthiness directive:

94–01–11 Airbus Industrie: Amendment 39–8793. Docket 93–NM–119–AD.

Applicability: Model A320 series airplanes, equipped with ram air turbine (RAT) part number 680203019, 680203020, 680203021, or 680203027; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the RAT from breaking away from its support leg, which could damage the airplane structure and systems, and could injure ground personnel, accomplish the following:

(a) Perform a detailed visual inspection and an end-float check of the RAT between turbine and leg, in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, at the earliest of the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD:

(1) Within the next 450 flight hours after the effective date of this AD; or

(2) Before and after the first functional ground check of the RAT that is performed after the effective date of this AD; or

(3) After the first in-flight deployment of the RAT that occurs after the effective date of this AD.

(b) If no discrepancy is detected, repeat the detailed visual inspection and the end-float check after each functional ground check of the RAT, and after each in-flight deployment of the RAT.

Note 1: Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, references Dowty Aerospace Service Bulletin 600–29–171, dated January 4, 1993, which provides specific descriptions of the

discrepancies in paragraph 2 of that service bulletin.

Note 2: The discrepancies that are addressed in this AD can only occur during use of the RAT and not during stowage of the RAT; therefore, it is not necessary to perform the repetitive inspections and end-float checks before each functional ground check of the RAT if the RAT has not been used since the preceding inspection.

(c) If any discrepancy is detected as a result of any detailed visual inspection required by this AD, prior to further flight, accomplish the requirements of paragraph (c)(1) and (c)(2) of this AD.

(1) Replace the RAT in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993; and

(2) After replacement, repeat the detailed visual inspection and the end-float check required by paragraph (a) of this AD. Thereafter, repeat the detailed visual inspection and the end-float check after each functional ground check of the RAT, and after each in-flight deployment of the RAT.

(d) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) 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.

(f) The inspections, checks, and replacement shall be done in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–451 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–57–AD; Amendment 39–8810; AD 93–24–02 R1]

Airworthiness Directives: Piper Aircraft Corporation PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 93–24–02, which currently requires inspecting the elevator control tube assembly area for damage (cracks, separation, corrosion, wear, elongated holes, etc.) on Piper Aircraft Corporation (Piper) PA31, PA31P, and PA31T series airplanes, and replacing any damaged parts. An incident where one of the affected airplanes experienced complete loss of elevator control while in flight prompted that AD. Since issuance of that action, the Federal Aviation Administration (FAA) has received reports that the figure contained in the AD specifies an incorrect installation of the elevator control tube assembly. This action maintains the requirements of the previous AD, and corrects the figure to reflect the correct installation. The actions specified by this AD are intended to prevent elevator control problems caused by a damaged elevator control tube assembly, which could result in loss of control of the airplane.

DATES: Effective February 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 31, 1994.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–57–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93–CE–57–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: AD 93–24–02, Amendment 39–8751 (58 FR 63524, December 2, 1993), currently requires inspecting the elevator control tube assembly area for damage (cracks, separation, corrosion, wear, etc.) on Piper PA31, PA31P, and PA31T series airplanes, and replacing any damaged parts.

A report of an incident where a Piper PA31T series airplane experienced a loss of elevator control while in flight prompted AD 93–24–02. The pilot landed the airplane safely using the elevator trim control. Investigation by the National Transportation Safety Board (NTSB) and the FAA disclosed that the aft control rod end bearing, part number (P/N) 49261–02, had separated into two pieces. This aft control rod end bearing connects the elevator control tube to the elevator horn. The elevator control was subsequently mechanically disconnected from the pilot's control yoke and the elevator downspring. Further investigation revealed a fatigue crack at the thread root, which extended through the rod end cross section.

This incident prompted this operator to conduct an inspection of the elevator control tube assembly area on all of the Piper PA31, PA31P, and PA31T series airplanes in this particular operator's fleet. The results were summarized in a Mechanical Reliability Report (MRR), which was submitted to the FAA. This MRR specifies problems in the elevator control tube assembly area on 21 of the 23 inspected airplanes. The following briefly describes some of the discrepancies:

- 13 airplanes had incorrect push rod connecting bolts installed in the forward or aft positions (or both);
- 12 airplanes had push rod connecting bolts with wear or pitting corrosion (or both) in the shank area;
- 13 airplanes had excessive play in the aft rod end bearings;
- 7 airplanes had aft rod ends with moderate to severe wear or corrosion (or both) on the bearing ball; and
- 3 airplanes had binding in the rod ends, one of which was completely frozen.

Since issuance of AD 93–24–02, the FAA has received several reports that the figure contained in the AD specifies an incorrect installation of the elevator control tube assembly area. In particular, the figure depicts installation of the AN174–11A and AN174–12A bolts with a castellated nut and cotter pin. This installation is actually accomplished utilizing a MS20365–428C nut instead of a castellated nut and cotter pin.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD 93–24–02 should be revised in order to prevent elevator control problems caused by a damaged elevator control tube assembly.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA31, PA31P, and PA31T series airplanes of the same type design, this AD revises AD 93–24–02 by (1) maintaining the requirement of inspecting the elevator control tube assembly area for damage, and replacing any damaged part; and (2) correcting the Figure contained in the AD to include the correct installation of the AN174–11A and AN174–12A bolts.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this 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 will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD 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 No. 93–CE–57–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation and must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–8751 (58 FR 63524, December 2, 1993), and adding a new AD to read as follows:

93–24–02 R1 Piper Aircraft Corporation: Amendment 39–8810; Docket No. 93–CE–57–AD.

Applicability: PA31, PA31P, and PA31T series airplanes (all models and serial numbers), certificated in any category.

Compliance: Required within the next 30 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent elevator control problems, which could lead to loss of control of the airplane, accomplish the following:

(a) Ensure that the elevator control tube assembly area is not damaged by accomplishing the following inspections and procedures:

(1) Gain access to the elevator controls in the tail by removing the bottom half of the tailcone and the fuselage side panels.

(2) Remove the long pushrod that connects the bellcrank and the elevator horn.

(3) Secure the aft end of the bungee link to the elevator horn with safety wire for removal and installation of the bungee attach bolt.

(4) Inspect, using FAA-approved magnetic procedures, the rod end shank and threads for cracks. If found cracked, prior to further flight, replace the rod end with part number (P/N) 49261–02 or P/N 452–658.

(5) Visually inspect the bearing in the rod end for wear and free movement. If wear is found or the bearing will not move, prior to further flight, replace the rod end with P/N 49261–02 or P/N 452–658.

(6) Inspect, using a 10X magnifying glass, the forward attach holes in the pushrod for cracks, corrosion, or elongation. If cracks, corrosion, or elongation is found, prior to further flight, replace the pushrod with P/N 40847–00, 40847–04, or 40847–07, as applicable.

(7) Visually inspect the forward and aft attach area to ensure that both a forward bolt, P/N 402 311 (AN 174–12A), and an aft bolt, P/N 402 317 (AN 174–11A), are installed. If either one of these bolts is not installed, prior to further flight, install the applicable bolt or replace the existing bolt with one of the applicable part number.

(8) Remove the safety wire, reinstall the pushrod, check to ensure that the elevator rigging is correct, and reinstall the bottom half of the tailcone and the fuselage side panels.

Note 1: Figure 1 of this AD illustrates the elevator assembly and the specific areas that are to be inspected.

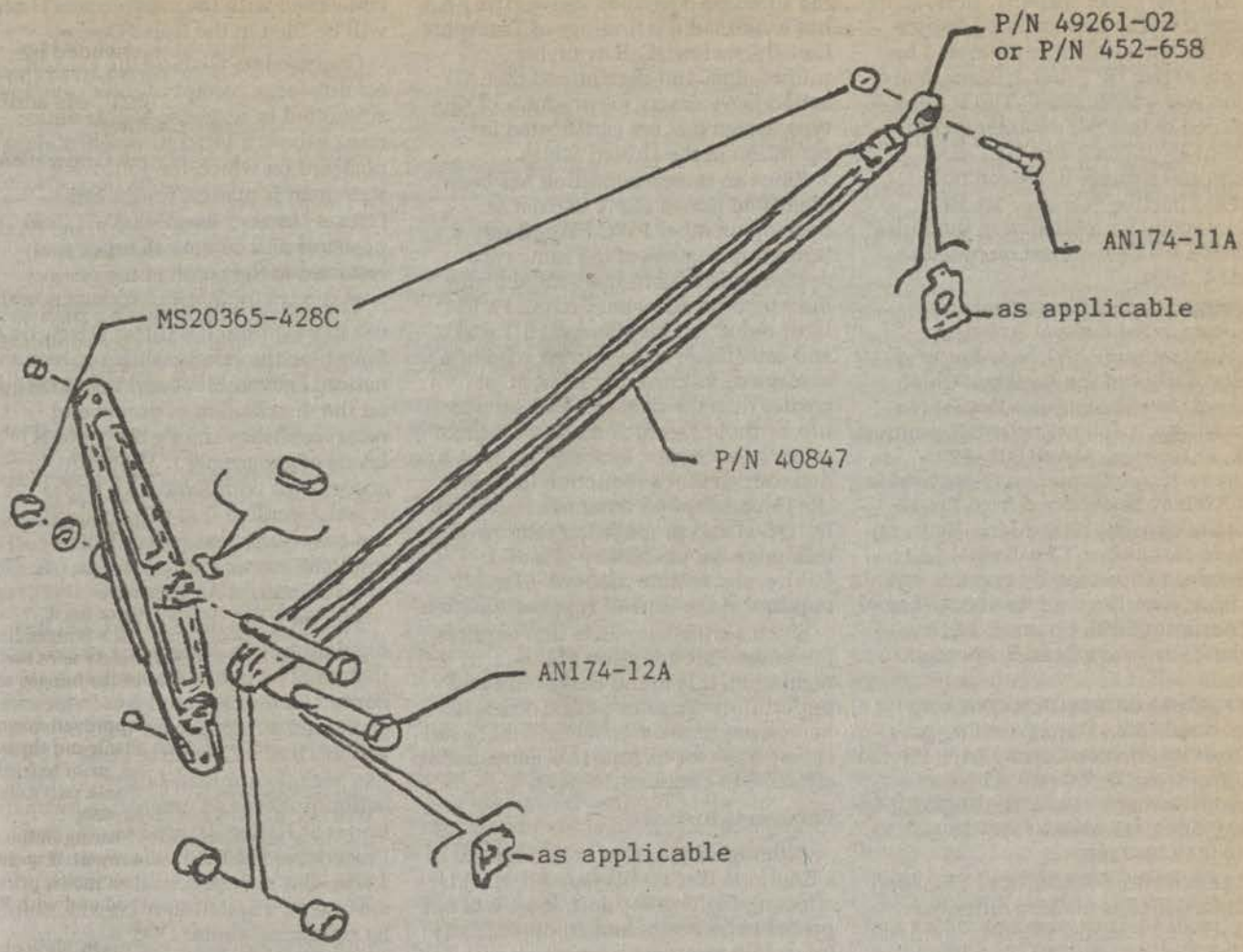

Figure 1

(b) 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.

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

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

(d) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–8810) revises AD 93–24–02, Amendment 39–8751.

(f) This amendment (39–8810) becomes effective on February 15, 1994.

Issued in Kansas City, Missouri, on January 24, 1994.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2091 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–04; Amendment 39–8808; AD 94–03–02]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada PW100 series turboprop engines. This action requires a life limit reduction for affected high pressure turbine (HPT) disks, and establishes a drawdown

schedule for disks currently near, at, or greater than the new reduced service life. This amendment is prompted by reports of two HPT disk failures, one of which was uncontained. The actions specified in this AD are intended to prevent an uncontained HPT disk failure and damage to the aircraft.

DATES: Effective February 16, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 4, 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. 94–ANE–04, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000, Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1. 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: Marc Bouthillier, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7135, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Pratt & Whitney Canada (PWC) Model PW118, PW118A, PW120, PW120A, PW121, PW123, PW124B, and PW125B turboprop engines. Transport Canada advises that they have received reports of two high pressure turbine (HPT) disk failures in the rim region with subsequent inflight engine shutdowns. Both disks failed at the same location in low cycle fatigue. One event was fully contained within the engine casings; the second event liberated some small debris through the engine nacelle.

Transport Canada issued AD CF–94–XX, dated January XX, 1994, in order to assure the airworthiness of these PWC PW100 series turboprop engines in Canada.

This engine model is manufactured in Canada 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. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and 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 PWC PW100 series turboprop engines of the same type design registered in the United States, the proposed AD would require a life limit reduction for affected HPT disks, and establishes a drawdown schedule to manage disks currently near, at, or greater than the new reduced service life, without significant effect on flight safety or economic factors. The FAA has determined that a reduction in cyclic life limit, based on demonstrated crack initiation and propagation rates, would minimize the possibility of a disk failure, and restore the level of safety required at the time of type certification.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD 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 94–ANE–04." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

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

94-03-02 Pratt & Whitney Canada: Amendment 39-8808. Docket 94-ANE-04.

Applicability: Pratt & Whitney Canada (PWC) Model PW118, PW118A, PW120, PW120A, PW121, PW123, PW124B, and PW125B turboprop engines, installed on but not limited to Dehavilland DHC-8 series, Embraer EMB-120 series, ATR-42 and -72 series, Fokker 50 series, Canadair Models CL-215T and 415, Dornier 328 series, British Aerospace ATP series, and XAC Y7-200A aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained HPT disk failure and damage to the aircraft, accomplish the following:

(a) Remove from service high pressure turbine (HPT) disks, part numbers (P/N) 3035711 and 3038411, and replace with a serviceable part in accordance with the following schedule, based on cycles in service (CIS) on the effective date of this airworthiness directive (AD):

(1) For disks with 13,000 or more CIS, remove within the next 1,000 CIS after the effective date of this AD, but not to exceed 15,000 total CIS.

(2) For disks with 12,000 or more CIS, but less than 13,000 CIS, remove within the next 1,250 CIS, but not to exceed 14,000 total CIS.

(3) For disks with 10,000 or more CIS, but less than 12,000 CIS, remove within the next 1,750 CIS, but not to exceed 13,250 total CIS.

(4) For disks with 8,000 or more CIS, but less than 10,000 CIS, remove within the next 2,500 CIS, but not to exceed 12,000 total CIS.

(5) For disks with less than 8,000 CIS, remove at or prior to accumulating 10,000 total CIS.

(b) This AD establishes a new service cycle life limit for HPT disks, P/N 3035711 and 3038411, of 10,000 total CIS.

Note: Further information on the life limit reduction for affected HPT disks can be found in PWC Service Information Letter No. 307, dated December 17, 1993.

(c) 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.

(d) 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.

(e) This amendment becomes effective on February 16, 1994.

Issued in Burlington, Massachusetts, on January 24, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-2177 Filed 1-31-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 91-NM-65-AD; Amendment 39-8802; AD 94-04-04]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that requires inspections of certain fuselage frames for cracks, and modification, if necessary; inspections to detect cracks in certain frame gussets, and replacement, if necessary; and inspections at certain body stations to detect open pilot holes and to detect cracks in any open pilot hole found, and repair and modification, if necessary. This amendment is prompted by reports of cracked frames and open pilot holes. The actions specified by this AD are intended to prevent frame failures and consequent rapid decompression of the cabin.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1994.

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

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2771; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on May 7, 1993 (58 FR 27217). That action proposed to require inspections of certain fuselage frames for cracks, and modification, if necessary; inspections to detect cracks in certain frame gussets, and replacement, if necessary; and inspections at certain body stations to detect open pilot holes and to detect cracks in any open pilot hole found, and repair and modification, if necessary.

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

One commenter supports the proposed rule.

One commenter, Boeing, requests that the proposed rule be withdrawn and suggests that the service bulletin cited in the proposal be incorporated into the structural modification and inspection program for aging airplanes. Boeing references a similar situation involving the overwing stub frames on Model 737 series airplanes. No AD was issued in that instance; instead, the preventive modification was made part of the aging fleet modification program at life goal. Boeing also states that including the service bulletin cited in the proposal in the modification program would reduce the number of AD's concerning that subject.

Boeing also believes that the consequence of frame failures was overstated in the proposal. Boeing indicates that although dozens of cases of basic frame cracking have occurred, only four cases of inboard strap cracking and no cases of frame outboard reinforcing strap cracking have been reported. Boeing adds that for rapid decompression to occur, the skin must crack; and there have been no reports of skin cracks in this area as a result of frame cracks. Boeing believes that rapid decompression is extremely unlikely because there is ample reinforcing structure in this area.

The FAA does not concur with the commenter's request to withdraw the proposal. Although there have been no reports of outboard strap or skin cracking, the FAA has determined that the potential exists for failure of the frames, which could lead to failure of the straps and skin in the absence of the repair and preventive modification or inspection program. Such failures would result in rapid decompression of the airplane. The FAA finds that it is not warranted to delay the proposed

repair for inclusion in the aging airplane program.

The Air Transport Association (ATA) of America, on behalf of two of its members, requests that the FAA reconsider the proposed requirement of this AD to remove fasteners prior to inspection and, if necessary, require another inspection to verify the existence of cracks without fastener removal. One commenter suggests that an option should be included in the final rule that would allow visual inspections at more frequent intervals in lieu of the proposed fastener removal and eddy current inspections. Another commenter suggests that fastener removal should be required only during the initial inspection, and that subsequent inspections should be accomplished using visual and high frequency eddy current inspection methods. This commenter states that accomplishment of these suggested subsequent inspections will ensure that a crack does not reach a critical length. ATA expresses concern that continual removal of fasteners may initiate crack development.

The FAA does not concur with the commenters' requests to revise the intervals or procedures specified in this AD for inspections involving fastener removal. The FAA has reconsidered various alternatives to the inspection methods and intervals specified in this AD in light of available crack growth analysis data. The FAA finds that eddy current inspections with fasteners in place would be required at intervals of 1,500 flight cycles, or four times as often as the interval of 6,000 flight cycles (with fasteners removed) specified in this AD. Further, the FAA finds that if fastener removal were only required during the initial inspection and subsequent eddy current inspections with fasteners in place were required, the first inspection interval would be 6,000 flight cycles with subsequent inspection intervals of 1,500 flight cycles. In light of the safety implications and practical aspects of an orderly inspection of the fleet during regular maintenance periods, the FAA considers inspections with fasteners removed at intervals of 6,000 flight cycles to be the appropriate requirement for this AD. However, the FAA would consider a request for an adjustment of the inspection methods or intervals, in accordance with the provisions of paragraph (e) of this AD, provided that, for example, data is submitted to substantiate that such methods or intervals ensure that cracks will not reach a critical length.

One commenter requests that credit be given in paragraph (d) of the proposal for inspections to detect open pilot holes performed in accordance with the original issue of the service bulletin. The commenter asks specifically that the proposal be revised to state that repairs accomplished in accordance with the Model 727 Structural Repair Manual (SRM) are acceptable, provided repetitive inspections are performed thereafter at intervals of 6,000 flight cycles. This commenter has inspected the addressed area in accordance with the original issue of the service bulletin. The commenter indicates that the area targeted for inspection in paragraph (d) of the proposal is essentially the same area identified in the original issue of the service bulletin. The commenter is confident that any cracks in the pilot holes would have been detected during that inspection (and subsequently repaired) in accordance with that issue of the service bulletin. The commenter adds that airplanes inspected in accordance with the original issue of the service bulletin may have been repaired in accordance with chapter 51–40–3 of the SRM, as specified in that service bulletin. The commenter states that Boeing has not included a reference to the SRM repair in Revision 1 of the service bulletin because the SRM repair is not easily adapted to the subject frames. However, Revision 1 of the service bulletin indicates that repairs installed in accordance with the original issue of the service bulletin are adequate as long as repetitive inspections are accomplished.

Similarly, one commenter requests that paragraphs (b) and (c) of the proposal, which address (in part) inspections of the fastener holes, the frame flange and web, and certain frame gussets, be revised to allow credit for inspections accomplished previously in accordance with the original issue of the service bulletin in that the proposed compliance time should be longer for airplanes that have been inspected previously in accordance with the original issue of the service bulletin than for those airplanes that have not been inspected. The commenter states that any cracks in the pilot holes would have been detected during inspections accomplished in accordance with the original issue of the service bulletin.

The FAA does not concur with the commenters' requests to allow credit for inspections accomplished in accordance with the procedures described in the original issue of the service bulletin. The original issue of the service bulletin does not contain procedures for inspections to detect cracks in open pilot holes, which is a requirement of this AD. Consequently, the FAA cannot be certain that operators that accomplished procedures specified in the original issue of the service bulletin also inspected for and repaired cracks in open pilot holes, as required by this AD.

Another commenter requests that plugging uncracked pilot holes in accordance with Part VII of the service bulletin be considered optional terminating action for the repetitive inspections proposed in paragraph (d)(2)(i) of this AD. The FAA does not concur. The location of pilot holes in the members of the built-up structure has been shown to vary; therefore, since all of the open pilot holes may not be visible during an inspection, it is possible that "figure 8 holes" could exist on the inner members of that structure. These figure 8 holes are two holes that have not been drilled concentrically. The danger of figure 8 holes is that they have been shown to create very high local stress. In light of this hazard, the FAA cannot allow plugging uncracked pilot holes to be considered terminating action for the repetitive inspections discussed previously.

This commenter also requests that reference to Part VI of the Accomplishment Instructions of the service bulletin be removed from paragraph (d)(2) of the proposal. The commenter states that the procedures described in Part VI of the Accomplishment Instructions of the service bulletin are not applicable to this paragraph of the proposal.

The FAA concurs partially. The FAA's intent in referring to Part VI of the Accomplishment Instructions of the service bulletin was simply to specify that the appropriate inspection technique to be performed is a close visual inspection, which is referenced in Part VI of the Accomplishment Instructions of the service bulletin. However, the FAA recognizes that clarification of this inspection method is necessary. Therefore, paragraph (d)(2) of this final rule has been revised by removing reference to Part VI of the Accomplishment Instructions of the service bulletin and by specifying that a "close visual inspection" is defined as a close intensive visual inspection of highly defined structural details or locations, searching for evidence ot structural irregularity and using adequate lighting. In addition, inspection aids such as mirrors, etc., surface cleaning, and access procedures are required, as necessary, to gain proximity.

The commenter also requests that paragraph (d)(2)(iii) be revised to delete the phrase, "in accordance with * * * the service bulletin." The commenter states that repair of any crack found in

an open pilot hole that is located outside any of the shaded areas shown in Figures 3, 4, and 5 of the service bulletin cannot be separated from the preventive modification.

The FAA does not concur. Repair of a crack in an open pilot hole and installation of the preventive modification are two different items. While the service bulletin contains instructions for repairing cracks, it does not specify how to install the modification if the cracked pilot hole is located outside the shaded area covered by the service bulletin. Consequently, operators are required to request approval from the FAA of a method of installing the modification.

The final rule has been revised to correct certain typographical errors in regard to paragraph and service information references, as follows:

1. Paragraph (d)(1) has been revised to clarify that if no open pilot hole is found, no further action is required by paragraph (d) of this AD.

2. Paragraph (d)(2)(i) of this AD has been changed to refer to paragraphs (d)(2)(ii) and (d)(2)(iii), rather than paragraphs (d)(1)(ii) and (d)(1)(iii), respectively.

3. Paragraph (d)(2)(ii) of this AD has been revised to refer to paragraph (d)(2)(i), rather than paragraph (d)(1)(i).

4. Paragraph (d)(2)(iii) of this AD has been changed to refer to paragraph (d)(2)(i), rather than paragraph (d)(1)(i).

Additionally, for consistency with the service bulletin, paragraphs (a) and (b) of this AD have been revised to include the word "repair" where any reference is made to the preventive modification. This word is added to clarify the FAA's intent that when cracks are found, operators must install the applicable "repair and preventive modification."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 53 work hours per airplane to accomplish the required 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 $3,416,380, or $2,915 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 adding the following new airworthiness directive:

94-04-04 Boeing: Amendment 39-8802. Docket 91-NM-65-AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of fuselage frames and depressurization of the airplane, accomplish the following:

(a) For airplanes identified as Group 1 or 2 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at body stations (BS) 760.95, 783.95, 825.95, and 848.95 in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(1) If any crack is found, prior to further flight, install the applicable repair and preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the modified frame flange and web are required by this AD.

(2) If no crack is found, prior to further flight, accomplish one of the procedures identified in paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, in accordance with Part I, paragraph E., of the Accomplishment Instructions of the service bulletin.

(i) Oversize the hole by 1/32 inch and install an oversized fastener. Prior to the accumulation of 12,000 flight cycles after oversizing the hole, and thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a) of this AD. If any crack is found, prior to further flight, install the applicable repair and preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD. Or

(ii) Install the same size fastener that was removed. Thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a) of this AD. If cracks are found, prior to further flight, install the applicable repair and preventive modification in accordance with Part III of the Accomplishment Instructions of the bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD. Or

(iii) Install the applicable repair and preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(b) For airplanes identified as Group 3, 4, or 5 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at body stations (BS) 760.95

and 783.95 in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(1) If any crack is found, prior to further flight, install the applicable repair and preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(2) If no crack is found, prior to further flight, accomplish one of the procedures identified in paragraphs (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with Part II, paragraph E. of the Accomplishment Instructions of the service bulletin:

(i) Oversize the hole by 1/32 inch and install an oversized fastener. Prior to the accumulation of 12,000 flight cycles after oversizing the hole, and thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (b) of this AD. If cracks are found, prior to further flight, install the applicable repair and preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD. Or

(ii) Install the same size fastener that was removed. Thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (b) of this AD. If cracks are found, prior to further flight, install the applicable repair and preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD. Or

(iii) Install the applicable repair and preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this repair and preventive modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(c) For airplanes identified as Group 1, 2, 3, or 4 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform a close visual inspection to detect cracks in the frame gussets at BS 825.95 in accordance with Part V (for Groups 1 and 2 airplanes) or Part VI (for Groups 3 and 4 airplanes) of the Accomplishment Instructions of the service bulletin. Repeat these inspections thereafter at intervals not to exceed 6,000 flight cycles.

(1) If any crack is found, prior to further flight, replace the gusset with a new gusset in accordance with Figure 10 (for Groups 1 and 2 airplanes) or Figure 11 (for Groups 3 and 4 airplanes) of the service bulletin.

(2) Replacement of the gusset in accordance with paragraph (c)(1) of this AD constitutes terminating action for the repetitive inspections required by paragraph (c) of this AD.

(d) For airplanes identified as Group 1, 2, 3, 4, or 5 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform a close visual inspection of the inner flange of the frames and the strap on the inner flange at BS 760.95 and 783.95 to detect open pilot holes in accordance with Part VII of the Accomplishment Instructions of the service bulletin.

(1) If no open pilot hole is found, no further action is required by paragraph (d) of this AD.

(2) If any open pilot hole is found, perform a close visual inspection to detect cracks in that open pilot hole. A "close visual inspection" is defined as a close, intensive visual inspection of highly defined structural details or locations, searching for evidence of structural irregularity and using adequate lighting. In addition, inspection aids such as mirrors, etc., surface cleaning, and access procedures are required, as necessary, to gain proximity.

(i) If no crack is found in any open pilot hole, repeat the inspection required by paragraph (d)(2) of this AD thereafter at intervals not to exceed 6,000 flight cycles until the preventive modification specified in paragraph (d)(2)(ii) or (d)(2)(iii) of this AD, as applicable, is installed.

(ii) If any crack is found in an open pilot hole that is located inside any of the shaded areas shown in Figures 3, 4, and 5 of the service bulletin, prior to further flight, repair the crack in the pilot hole and install a preventive modification in accordance with Part III or IV of the Accomplishment Instructions of the service bulletin. Installation of a preventive modification constitutes terminating action for the repetitive inspections of the open pilot holes specified in paragraph (d)(2)(i) of this AD.

(iii) If any crack is found in an open pilot hole that is located outside any of the shaded areas shown in Figures 3, 4, and 5 of the service bulletin, prior to further flight, repair the crack in the pilot hole in accordance with part III or IV of the Accomplishment Instructions of the service bulletin, and install a preventive modification in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Installation of a preventive modification constitutes terminating action for the repetitive inspections of the open pilot holes specified in paragraph (d)(2)(i) of this AD.

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

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

(f) 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.

(g) The actions shall be done in accordance with Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 12, 1994.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-1226 Filed 1-31-94; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-79-AD; Amendment 39-8789; AD 94-01-07]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires repetitive tests of the main rudder power control unit (PCU) to detect excessive internal leakage of hydraulic fluid, stalling, or reversal, and the eventual replacement of the main rudder PCU with an improved model. This amendment is prompted by results of an investigation which revealed that the secondary slide in the servo valve of certain PCU's can go past the intended maximum-travel position. The actions specified by this AD are intended to prevent secondary slide overtravel from occurring, which could cause the rudder actuator piston and the rudder to operate with reduced force capability or to move in a direction opposite to the intended direction; this could result in reduced controllability of the airplane.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of March 3, 1994.

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

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on August 16, 1993 (58 FR 43301). That action proposed to require periodic tests of the main rudder PCU to detect excessive internal leakage of hydraulic fluid, stalling, or reversal, and the correction of discrepancies. That action also proposed to require the eventual replacement of the main rudder PCU with an improved model; such replacement would constitute terminating action for the periodic tests.

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

Several commenters request that the proposed rule be revised to require a one-time internal leakage test of the PCU, instead of the proposed repetitive tests every 750 flight hours. These commenters consider that the existing pre-flight controls check is adequate to detect rudder control anomalies that would be due to dual servo valve secondary slide overtravel; since this check is performed prior to each flight, it will verify the function of the rudder control system on a regular basis. These commenters believe that the proposed repetitive test is not appropriate or reliable, since it is sensitive to variables such as temperature and the inspecting technician's individual technique and judgment. In addition, some of these commenters believe that the secondary slide overtravel problems are attributable to either adverse tolerance build-up or improper assembly of the PCU during manufacture, and are not due to wear or deterioration of the valve over time; therefore, these commenters consider that repetitive tests are unnecessary. One commenter states that the proposed test has not proved to be reliable in identifying rudder PCU anomalies, and that this test could cause a rise in the number of removals of PCU's that would typically be serviceable; this would have a severe economic impact on affected operators.

The FAA does not concur with the commenters' request. First, the FAA notes that rapid rudder inputs are a factor in uncovering rudder control anomalies. During a pre-flight check, the flight crew may not cycle the rudder PCU at a rate fast enough to uncover secondary slide overtravel. For this reason, the FAA does not agree that all rudder control anomalies due to secondary slide overtravel can be detected during pre-flight checks.

Second, although the FAA agrees that the required repetitive test is not completely repeatable and could be subject to the judgment of the technician, the FAA recognizes it as a written procedure for maintenance crews to follow, which emphasizes cycling of the rudder pedals at a maximum rate. While this test cannot ensure that the secondary slide overtravel anomaly does not exist, it can detect certain conditions that contribute to secondary slide overtravel. For example, the overtravel anomaly, combined with either (1) A secondary summing arm missing its stop or (2) a primary slide jamming to the secondary slide, would be detected during the repetitive test. During bench testing on one PCU, the secondary summing arm was observed hitting its stop on some occasions and missing it on others; this intermittent condition, if combined with the secondary overtravel anomaly and rapid rudder inputs, could cause rudder control problems. For these reasons, the FAA has determined that the required repetitive tests will contribute to flight safety because they exercise the rudder pedals at a rapid rate and they can detect high internal leakage within the servo valve.

Several commenters request that the compliance time for replacing the main rudder PCU be extended from the proposed 5 years to at least 7 years. These commenters state that such an extension is necessary to avoid the economic burden to operators that would be caused by a campaign of scheduled removals. A 7-year compliance time would correspond to a typical overhaul period for the main rudder PCU, and would avoid unscheduled removal of PCU's that exhibit no operational anomalies. Some commenters note that the design feature that allows secondary slide overtravel has existed for over 25 years and, over that time period, has accumulated 55 million flight hours in the affected fleet with no known in-flight control problems. These commenters state that it would be extremely rare for the problem condition to exist in combination with other factors so as to result in a reduction of rudder control capability. For these reasons, these commenters consider that extending the compliance time for completion of the replacement would not appreciably affect the safety of the fleet.

The FAA does not concur with the commenters' request to extend the compliance time for replacement of the PCU. Although the FAA acknowledges that no known in-flight control problems have been documented on Model 737 airplanes with regard to the subject condition, the FAA does recognize that two PCU's have been removed from Model 737 series airplanes after the pilot identified rudder control problems during the pre-flight check. In developing an appropriate compliance time for this action, the FAA considered the safety implications of incidents such as these, the availability of required parts, and the normal maintenance schedules for timely accomplishment of the replacement. Further, only the original equipment manufacturer possesses approved data allowing it to accomplish the rework of the affected PCU's; therefore, the compliance time also was based on the capability of this manufacturer to schedule and modify all of the affected servo valves. In light of these items, the FAA has determined that 5 years for compliance is appropriate. The FAA considers that a 5-year compliance time allows ample time for all affected PCU's to be modified by the manufacturer, without creating a burden on either the operators or the manufacturer. Five years also allows ample time for the replacement to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling. However, paragraph (c) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data is presented to justify such an adjustment.

One commenter strongly supports the proposed rule, but considers that the 5-year compliance time for replacement of the PCU's is too long. This commenter requests that replacement of all affected

PCU's should begin immediately as replacement parts become available, instead of allowing operators to operate airplanes equipped with potentially defective PCU's for up to 5 years. This commenter notes that the addressed anomaly was first discovered in July 1992 and, by the time the proposed rule becomes effective and the end of the 5-year compliance period is reached, approximately 7 years will have elapsed since then. This amount of time is too long, considering the significance of the addressed unsafe condition.

The FAA does not concur with the commenter's request to shorten the compliance time for replacement of the PCU's. For the same reasons explained previously, the FAA has determined that a 5-year compliance time is appropriate. The repetitive tests of the PCU required by this AD will provide an acceptable level of safety in the interim. Additionally, the commenter should not assume that all operators will wait until the end of the compliance time before replacement the PCU's. In fact, the FAA has been advised that the PCU manufacturer has already begun rework activity and some airlines have already begun replacement procedures.

One commenter requests that paragraph (a)(2) of the proposed rule be revised to provide operators with the option of installing a serviceable, non-modified PCU, rather than only a modified PCU, if a discrepancy is detected during any test. Operators should be allowed to use this non-modified PCU, provided that it is repetitively tested until replacement of all PCU's is required in 5 years. Such a revision to the rule would prevent unnecessary grounding of an airplane if a discrepancy is detected and a modified PCU is not available. The FAA concurs and has revised the final rule accordingly.

Another commenter requests that the proposed rule be revised to address third-party repaired parts. This commenter states that at least one repair facility is producing FAA-approved replacement slide and sleeve assemblies to overhaul the Parker-Hannifin main rudder PCU dual servo valves. The commenter believes that it is the FAA's responsibility to ensure that third-party replacement parts are reworked in a controlled manner to the same level of safety as that provided by the retrofit plan developed by the original equipment manufacturer (OEM), since the replacement parts were approved solely by the FAA without support from the OEM.

The FAA does not concur that such a revision to the rule is necessary. Paragraph (c) of the final rule contains a provision that allows third-party replacement part manufacturers to submit proposed design changes to the FAA for approval as alternative methods of compliance with the AD.

One commenter suggests that the discussion of the requirements of the proposed rule be revised to clarify that the test of the main rudder PCU is necessary not only to detect excessive internal leakage of hydraulic fluid, but to detect and correct possible stalling and reversal as well. The FAA concurs. Although the test is accomplished to detect excessive internal leakage, the AD requires that any discrepancy, such as stalling and reversal, that is detected during the test must be corrected prior to further flight. The AD references Boeing Service Letter 737–SL–27–82–B for a description of the possible discrepancies that could be found during the required test. The wording to the preamble of this final rule has been revised to include reference to the possible discrepancies of stalling and reversal; however, the wording of the AD itself needs no revision.

This same commenter suggests that the description of the unsafe condition on which this AD action is based could be worded more accurately. This commenter states that the actions specified by the AD are intended to prevent secondary slide overtravel from occurring, which could cause the rudder actuator piston and the rudder to "operate with reduced force capability or to move in a direction opposite to the intended direction." The FAA concurs with the commenter's suggestion and has revised the appropriate wording accordingly.

Two commenters suggest that the cost impact information in the preamble to the notice was not totally accurate in showing the complete costs to operators, especially those costs related to the required repetitive tests. One commenter states that each test would require approximately 8 work hours to accomplish, and that, based on the 750-flight hour repetitive test interval, most airplanes would be required to be tested between 6 and 10 times over the next 5 years (until replacement of the PCU is completed). Another commenter states that the total time required for removing and installing the PCU is 20 work hours. The FAA concurs that the economic information should be clarified. The cost impact figures, as stated in the preamble to the notice, were based on the latest data that the FAA had at that time. The cost impact information, below, has been revised to delineate the costs of the required actions, based on this latest information provided by the commenters.

Paragraphs (a)(1) and (a)(2) of the final rule have been revised to correctly reference paragraph "3.B." of Boeing Service Letter 737–SL–27–82–B for the description of possible discrepancies that could be found during the required test. The notice had incorrectly referenced paragraph "B." rather than "3.B."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,448 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 729 airplanes of U.S. registry will be affected by this AD.

It will take approximately 8 work hours per airplane to accomplish the required test actions, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the tests required by this AD on U.S. operators is estimated to be $320,760, or $440 per airplane, per test.

According to information provided by commenters to the notice that preceded this rule, some airplanes may require to be tested between 6 and 10 times prior to the required replacement of the PCU (within 5 years). In the case of those airplanes requiring 6 tests, the total cost impact of the required repetitive tests would be $2,640 per airplane over 5 years; in the case of those airplanes requiring 10 tests, the total cost impact of the required repetitive tests would be $4,400 per airplane over 5 years.

The number of required work hours, as indicated above, is presented as if the tests required by this AD were to be conducted as "stand alone" actions. However, in actual practice, these tests could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

It will take approximately 20 work hours per airplane to accomplish the required replacement of the PCU (removal and installation), at an average labor rate of $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators.

Based on these figures, the total cost impact of the replacement required by this AD is estimated to be $801,900, or $1,100 per airplane.

The 5-year compliance time for the replacement of the PCU, as specified in paragraph (b) of this AD, will allow ample time for the replacement to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The total cost impact figures described above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that several operators already have accomplished at least the initial required test of the PCU's on their affected fleets, and certain operators already have replaced some PCU's. Therefore, the future economic cost impact of this rule on U.S. operators is less than that indicated above.

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 adding the following new airworthiness directive:

94-01-07 Boeing: Amendment 39-8789. Docket 93-NM-79-AD.

Applicability: Model 737 series airplanes; line positions 1 through 2453, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the rudder actuator piston and the rudder to operate with reduced force capability or to move in a direction opposite to the intended direction, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 750 flight hours after the effective date of this AD, perform a test of the main rudder power control unit (PCU), part number 65-44861-2/-3/-4/-5/-6/-7/-8/-9, to detect internal leakage of hydraulic fluid, in accordance with Boeing Service Letter 737-SL-27-82-B, dated July 13, 1993.

(1) If no discrepancy, as described in paragraph 3.B. of the Service Letter, is detected, repeat the test at intervals not to exceed 750 flight hours.

(2) If any discrepancy, as described in paragraph 3.B. of the Service Letter, is detected during any check, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Replace the main rudder PCU with a serviceable PCU in accordance with the Model 737 Overhaul Manual. After such replacement, repeat the test at intervals not to exceed 750 flight hours.

(ii) Replace the main rudder PCU with a new main rudder PCU having part number 65-44861-11 or 65C37052-2/-3/-4/-5/-6/-7/-8/-9, in accordance with Boeing Service Bulletin 737-27-1185, dated April 15, 1993. Such replacement constitutes terminating action for the tests required by this AD.

(b) Within 5 years after the effective date of this AD, replace the main rudder PCU, part number 65-44861-( ), with a new main rudder PCU having part number 65-44861-11 or 65C37052-2/-3/-4/-5/-6/-7/-8/-9, in accordance with Boeing Service Bulletin 737-27-1185, dated April 15, 1993. Such replacement constitutes terminating action for the tests required by this AD.

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

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

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the airplane has not failed the internal leakage test required by this AD.

(e) The tests shall be done in accordance with Boeing Service Letter 737-SL-27-82-B, dated July 13, 1993. The replacement shall be done in accordance with Boeing Service Bulletin 737-27-1185, dated April 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-347 Filed 1-31-94; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-138-AD; Amendment 39-8797; AD 94-01-15]

Airworthiness Directives; Boeing Model 747 Series Airplanes With Stretched Upper Decks (SUD)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires installation of an aluminum seal retainer on the bulb seal attached to the fascia panels of the escape systems on the SUD. This amendment is prompted by a report that, during deployment of an emergency evacuation slide, the slide inflated but subsequently lost air from one chamber. The actions specified by this AD are intended to prevent the bulb seal from coming off the fascia panels and being ingested into the turbofans of the escape systems on the stretched upper deck (SUD), which could impede the inflation of the escape slide during an emergency situation.

DATES: Effective March 3, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1994.

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

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2784; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 747 series airplanes with stretched upper decks (SUD) was published in the **Federal Register** on September 21, 1993 (58 FR 48983). That action proposed to require installation of an aluminum seal retainer on the bulb seal attached to the fascia panels of the escape systems on the SUD.

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

Three commenters support the proposal.

One commenter considers that the proposed rule is not warranted since there has been only one reported incident where the bulb seal was ingested into the turbofan. The commenter states that, even during that incident, the damage was limited to one of the escape slide's chambers and the slide was still usable. The FAA does not concur with the suggestion that this AD action is not warranted. While the commenter is correct in noting that there has been only a single reported case of ingestion of the bulb seal into the turbofans, the potential still exists for a bulb seal to break away if there is no component to retain it. The consequences of the bulb seal breaking away and being ingested into the turbofan can ultimately impede the inflation of the escape slide, which creates a potential unsafe condition by rendering the slide unusable in the event of an emergency evacuation. Although the commenter indicates that the incident slide was still usable after being damaged, the FAA has determined that the potential exists for similar or greater damage to occur on any of the subject escape slides, as long as there is the possibility that the bulb seal can be ingested into the turbofans. Installation of the bulb seal retainer, as required by this AD, will positively address this potential unsafe condition by preventing the separation of the bulb seal from the fascia panel.

This same commenter requests that one airplane be deleted from the applicability of the AD. The airplane having line number 981 was modified with the bulb seal retainer prior to delivery; therefore, the unsafe condition does not exist with regard to this specific airplane. The FAA concurs and has revised the applicability of the final rule accordingly. Additionally, the economic impact information, below, has been revised to indicate the deletion of this airplane from those affected by the AD requirements.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 290 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts would be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,380, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 adding the following new airworthiness directive:

94–01–15 Boeing: Amendment 39–8797. Docket 93–NM–138–AD.

Applicability: Model 747 series airplanes with a stretched upper deck, all line numbers up to and including line number 980; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the bulb seal from coming off the fascia panels and being ingested into the turbofans of the escape systems on the stretched upper deck (SUD), which could impede the inflation of the escape slide during an emergency situation, accomplish the following:

(a) Within 6 months after the effective date of this AD, install an aluminum seal retainer on the bulb seal attached to the fascia panel of the escape systems on the SUD, in accordance with Boeing Alert Service Bulletin 747–25A3056, dated July 12, 1993.

(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, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(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.

(d) The installation shall be done in accordance with Boeing Alert Service Bulletin 747–25A3056, dated July 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 3, 1994.

Issued in Renton, Washington, on January 5, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–584 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–192–AD; Amendment 39–8813; AD 94–03–06]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This action requires inspections to detect improper connections of the wire harness installation to the nacelle fire extinguisher, correction of any discrepancy found, and modification of the wiring. This amendment is prompted by a report of improperly routed control wiring to the nacelle fire extinguishers on a Model SAAB 340B series airplane. The actions specified in this AD are intended to prevent failure of the fire extinguishing agent to reach the correct engine in the event of an engine fire.

DATES: Effective on February 16, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 16, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 4, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: 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: The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that improperly routed control wiring to the nacelle fire extinguishers was found during a "C check" inspection on a Model SAAB 340B series airplane. Further investigation revealed that some airplanes have an excessively long wire harness, which allows the possibility to incorrectly connect the wire harness to the nacelle fire extinguisher cartridge. When the fire extinguisher discharges, fire extinguishant transfers to the opposite nacelle fire zone if a wire harness is incorrectly routed or connected. In such a case, only one extinguisher, rather than two (as under normal conditions), is available to extinguish a fire in the nacelle fire zone. This condition, if not corrected, could result in failure of the fire extinguishing agent to reach the correct engine in the event of an engine fire.

Saab has issued Service Bulletin 340–26–012, Revision 1, dated October 5, 1993, that describes procedures for an inspection to detect improper connections of the wire harness installation to the nacelle fire extinguisher, correction of any discrepancy found, and modification of the wiring. The modification involves shortening the wires by making a loop and securing with wax string, as necessary. The LFV classified this service bulletin as mandatory and issued Swedish Airworthiness Directive SAD No. 1–059, dated September 13, 1993, in order to assure the continued airworthiness of these airplanes in Sweden.

This airplane model is manufactured in Sweden 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. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and 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, this AD is being issued to prevent failure of the fire extinguishing agent to reach the correct engine in the event of an engine fire. This AD requires an inspection to detect improper connections of the wire harness installation to the nacelle fire extinguisher, correction of any discrepancy found, and modification of the wiring. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD 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–192–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 adding the following new airworthiness directive:

94–03–06 SAAB AIRCRAFT AB: Amendment 39–8813. Docket 93–NM–192–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B, serial numbers 160 through 345 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To preclude cross-connection of the wire harness installation to the engine nacelle fire extinguisher, accomplish the following:

(a) Within 25 days after the effective date of this AD, perform an inspection to ensure proper connections of the wire harness installation to the nacelle fire extinguisher, in accordance with Saab Service Bulletin 340–26–012, Revision 1, dated October 5, 1993. Prior to further flight, correct any discrepancy found and modify the wiring, in accordance with the service bulletin.

(b) Repeat the inspection specified in paragraph (a) of this AD immediately following any maintenance action during which both electric connectors to either of the fire extinguishers in the nacelle electrical bays are disconnected.

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

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

(e) The inspections shall be done in accordance with Saab Service Bulletin 340–26–012, Revision 1, dated October 5, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 16, 1994.

Issued in Renton, Washington, on January 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2179 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASO–13]

Establishment of Class E Airspace; Courtland, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Courtland, Alabama. A Standard Instrument Approach Procedure (SIAP) for Runway 13 at the Industrial Airpark has been developed and controlled airspace from 700 feet to 1200 feet AGL is needed to contain IFR operations at the airport. The intended effect of this amendment is to provide adequate Class E airspace to contain IFR operations within controlled airspace. The operating status of the airport will change from VFR operations to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 U.T.C. March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5590.

SUPPLEMENTARY INFORMATION:

History

On August 12, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Courtland, Alabama, (58 FR 45079). A SIAP based on the Muscle Shoals Very High Frequency Omnidirectional Range (VOR) has been established to serve the Industrial Airpark Airport. Controlled airspace extending from 700 feet to 1200 feet AGL is needed to contain IFR operations at the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. This amendment is the

same as that proposed in the notice except for a slight correction to the latitude and longitude. 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 as "Class E Airspace" for airspace extending upward from 700 feet or more above the surface of the earth. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface 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 effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order. The operating status of the airport will change from VFR operations to include IFR operations concurrent with publication of the SIAP.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Courtland, AL. This action lowers the base of controlled airspace from 1200 feet above the surface to 700 feet above the surface in vicinity of Industrial Airpark Airport.

The intended effect of this action is to provide adequate Class E airspace for IFR operators executing the VOR Rwy 13 SIAP at Industrial Airpark Airport. 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, 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, 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; 47 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, in effect as of September 16, 1993, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ASO AL E5 Courtland, AL [New]

Industrial Airpark Airport, AL
(Lat. 34°39'34" N, long 87°20'56" W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Industrial Airpark Airport, excluding that airspace within the Muscle Shoals Class E airspace.

* * * * *

Issued in College Park, Georgia, on January 19, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–2204 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASO–9]

Establishment of Class E Airspace, Fort Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Fort Pierce, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 27 at the St. Lucie County International Airport has been developed and a Class E extension for controlled airspace to the surface is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E arrival extension at Fort Pierce, Florida (58 FR 41212). A Runway 27 instrument approach procedure to serve the St. Lucie Country International Airport based on the Fort Pierce Non-directional Beacon (NDB) had been developed. Controlled airspace to the surface, a Class E arrival extension, was needed to contain IFR operations when utilizing this 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 "control zone arrival extension" and has replaced it with the designation "Class E airspace" for airspace designated as an extension to Class D surface areas. The coordinates for this airspace docket are based on North American Datum 83. Designation for Class E airspace designated as an extension to Class D surface areas are published in paragraph 6004 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 a Class E arrival extension at Fort Pierce, Florida, to accommodate a Runway 27 SIAP based on the Fort Pierce NDB to the St. Lucie County International Airport. Controlled airspace to the surface, a Class E arrival extension, is needed to contain IFR operations when utilizing this SIAP.

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.

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 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ASO FL E4 Fort Pierce, FL [New]

Fort Pierce, St. Lucie County International Airport, FL
(Lat. 27°29'42" N., long. 80°22'06" W.)
Vero Beach VORTAC
(Lat. 27°40'42" N., long. 80°29'23" W.)
Fort Pierce NDB
(Lat. 27°29'12" N., long. 80°22'24" W.)

That airspace extending upward from the surface within 1.7 miles each side of the Vero Beach VORTAC 150 radial extending from the 4.2-mile radius of the St. Lucie County International Airport to 7 miles southeast of the Vero Beach VORTAC, within 2 miles each side of the 300 bearing from the Fort Pierce NDB, extending from the 4.2-mile radius of the airport to 7 miles northwest of the NDB, within 2 miles each side of the 060 bearing from the Fort Pierce NDB, extending from the 4.2-mile radius of the airport to 7 miles northeast of the NDB, excluding that portion within the Vero Beach, FL., Class D airspace area. This airspace is effective during the specific days and times established in advance by Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 13, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–2210 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R–94–1703; FR–3575–F–01]

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act Reporting Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Interpretive rule.

SUMMARY: To implement section 112 of the Housing and Urban Development Reform Act of 1989, the Department published a final rule in the **Federal Register** on May 17, 1991, at 56 FR 22912, establishing the requirements governing the lobbying of HUD personnel. The final rule established a new part 86 in title 24 of the Code of Federal Regulations. This interpretive rule relaxes the level of detail required to comply with the registrant reporting requirements of that final rule.

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Garry Phillips, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD number (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989, (the "Reform Act") added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.*

Section 13 requires, among other things, that:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action must register with HUD and report to HUD on their lobbying activities.

On May 17, 1991, at 56 FR 22912, the Department promulgated a final rule to implement section 13. On January 23, 1992, at 57 FR 2677, the Department published in the **Federal Register** an interpretive rule which required that the registrant report on all amounts provided in the retaining agreement for the lobbying activities involved. Under that interpretation, all amounts received, and all amounts expended, under the agreement during the reporting year must be reported. Each side of the ledger—receiving and expending (which shall include the fee retained)—should total the same amounts. The preamble to the January 23, 1992 interpretive rule stated—

> The Department believes that the registrant must report on all amounts received pursuant to the retaining agreement with respect to the lobbying activity. On the receipt side, the statute reaches "all money received * * * in carrying out the work * * *." In the Department's view, the amounts agreed upon in the agreement define the "work" to be carried out—they are the amounts that comprise the overall lobbying effort. This includes amounts *directly* related to the lobbying activities (such as the preparation of documents), as well as amounts *indirectly* related (such as travel and accommodation expenses). Direct or indirect, the agreed-upon amounts define the lobbying job.

However, in that interpretive rule, the Department relieved some of the burden of strict compliance with the above statement by stating that—

> The Department does not believe that it is necessary to report in a line-by-line itemization every taxicab fare, tuna sandwich, or telephone call. Reasonable aggregations of expenses by type of expenditure with appropriate labeling are sufficient, provided the aggregations are related to the same lobbying activity; i.e., the same award for financial assistance or the same management action. Examples of labels of reasonable aggregations are "meals," "transportation," "lodging," and "document preparation."

Because of the difficulty in complying with the reporting requirement described above and strong protest as to the need for the amount of detail needed to make each side of the ledger equal the same amount, the Department has re-examined the requirement and has concluded that, even with the aggregations of expenses described above, it does not need the amount of information now required to be disclosed. The vast majority of the information is of little value in

enforcing the statute, and the "all money * * * expended * * * in carrying out the work * * *" does not include amounts indirectly related (such as travel and accommodation expenses). The disclosure of this type of information is not necessary in order to be consistent with the intent and purpose of the statute which is to disclose "lobbying" activities.

This rule eliminates the idea that receipts must equal expenditures. However, the Department does believe that information regarding fees—and other things in lieu of fees paid—by the lobbyist to retain another lobbyist in the lobbying effort should still be collected. It is a valuable cross-check to ensure that where a second lobbyist is hired, the second lobbyist meets Section 13's registration and reporting requirements. Therefore, persons required to file an annual report must report only fees—and other things of value in lieu of fees—paid to other lobbyists retained for lobbying activities in the form HUD–2882–B "Lobbyist & Consultant Activity Annual Report of Persons Receiving Payment for Lobbying Activities." Form HUD–2882–B and the instructions for completing the form have been revised accordingly. The revised form HUD–2882–B is appended to this interpretive rule. It is not necessary to report merely incidental expenses.

Authority: Secs. 7(d) and 13(g), Department of Housing and Urban Development Act (42 U.S.C. 3535(d) and 3537b(g)).

Dated: January 6, 1994.

Henry G. Cisneros,

Secretary.

1. Accordingly, the Department adds the discussion contained in the "Supplementary Information" section of this document to the end of appendix C of 24 CFR part 86, as "Interpretive rule dated January 6, 1994".

2. Appendix C of part 86 is further amended by adding an appendix to the Interpretive rule dated January 6, 1994, to read as follows:

Appendix C to Part 86—Interpretive Rules of the Department Pertaining to Requirements Governing the Lobbying of HUD Personnel

* * * * *

Interpretive rule dated January 6, 1994.

* * * * *

Appendix to Interpretive Rule Dated January 6, 1994—Form HUD–2882–B.

BILLING CODE 4210–32–P

Lobbyist & Consultant Activity

Annual Report

of "Persons" Receiving Payment for Lobbying Activities

Section 112, HUD Reform Act

U.S. Department of Housing and Urban Development
Office of Ethics

See detailed instructions on the back.

OMB Approval No. 2535-0103 (exp. 6/30/94)

1. Name: (see instructions)	2. Social Security Number: (or EIN)	Registration Number: (HUD use only)

3. Business Address of Person/Entity listed in Item 1:

4. Report of fees, or other things of value in lieu of fees, received for lobbying activities

a. Person or Entity in whose interests You Appeared (from Whom Paid)	b. Federal Action Number	c. Purpose	d. Amount/Estimated Valuation

form HUD-2882-B (12/93

5. Report of fees, or other things of value in lieu of fees, paid to other lobbyists

a. Name & Address (to whom Paid)	b. SSN or EIN	c. Federal Action Number	d. Purpose	e. Amount/Estimated Valuation

6. Certification **Warning: HUD will prosecute** false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 42 USC 3537)

I certify that this information is true and complete.

a. Name: (print or type)	b. Position / Title:

c. Signature:

X

Date:

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2501-0012), Washington, D.C. 20503.

Privacy Act Statement: The Department of Housing and Urban Development Act, 42 USC 3537b, Sec. 13, requires the reporting of all this information, except the Social Security Number (SSN) or Employer Identification Number (EIN). The information will be used by HUD to improve HUD's ability to ensure that the process by which the awarding of financial assistance and taking management actions is conducted in a manner that is fair and open, and free from improper influence. The information will be used by HUD officials to determine compliance with applicable Federal laws and regulations. The information you furnish will be published annually as a notice in the Federal Register. The SSN or EIN will be used by HUD to ensure all requirements related to Federal laws and regulations are met.

Instructions

Introduction: Section 13 of the Department of Housing and Urban Development Act, USC 3537b, requires any person who is retained for the purpose of influencing the decision of any officer or employee of the Department of Housing and Urban Development (HUD) through direct communication with such officer or employee, with respect to: 1) the award of any financial assistance within the jurisdiction of HUD; or 2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person, to file with HUD a detailed report of fees or other things of value in lieu of fees received, and of fees or other things of value in lieu of fees paid to other lobbyists in connection with the lobbying activity. This form is to be used to report fees or other things of value received in lieu of fees during the previous reporting year.

This requirement does not apply:

- If the sum of the amounts of all reportable receipts is less than $10,000 in the reporting year;
- To receipt of reasonable compensation by a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action; (Any officer or employee asserting the exception must demonstrate, upon the Department's request and to the Department's satisfaction, that he/she qualifies for the exception, including that he/she received reasonable compensation and that he/she was a regularly employed officer or employee.)
- To any agreement that is wholly and expressly limited to complying with conditions, requirements or procedures imposed by HUD in connection with any financial assistance or management action. In order for this exception to apply, the conditions, requirements or procedures must be imposed, or reasonably believed by the person to be imposed, by law, regulation, written directive (such as a HUD handbook, notice, or application document) or imposed by an officer or employee of the Department;
- To any agreement, or to the receipt or payment of fees or any other things of value in lieu of fees in connection with litigation to which the person is a party;
- To a person who attempts to influence the Department on his or her own behalf, without retaining another person; and
- To receipt of compensation under an employment relationship between an entity and its partners, associates, officers or employees, where the entity is retained for lobbying services.

Definitions:

- Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; firm; partnership; society; and any other organization or group of people. The term does not include an Indian tribe, nor does it include a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.
- Regularly employed means, with respect to an officer or employee of a person requesting or receiving financial assistance or who is involved in a management action, an officer or employee who is employed by the person for at least 130 working days within one year immediately before the date of the submission that initiates the Department's consideration of the person for receipt of such assistance, or the date of initiation of any management action. For purposes of the preceding sentence, a management action undertaken by the Department is initiated on the date on which the action is first communicated to the public. To be regularly employed, the officer or employee must:

  (1) Be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children;

  (2) Have meaningful responsibilities; and

  (3) Have duty hours not less than individuals of similar rank and responsibilities.

When to File: The form must be filed with the Department between the 1st and 10th day of January of each year. The form is considered properly filed when deposited in a post office between the 1st and 10th day of January of each year, and is sent by certified or registered mail, postage prepaid and return receipt requested, to the Office of Ethics.

Who Must File: Any person who receives fees or any other things of value in lieu of fees during the reporting year in carrying out activities pursuant to a covered agreement.

Where to File: The form must be submitted to the Department of Housing and Urban Development, Office of Ethics (AE), 451 Seventh Street, S.W., Washington, D.C. 20410.

How to File: You must use this form to report to the Department. All information must be typed or block printed and legible. Do not abbreviate any text.

Block 1: In the case of an individual, provide the full name (last name, first name and middle initital) and in the case of an entity, provide the full business name.

Block 2 Provide your Social Security Number (SSN) or your Employer Identification number (EIN), or both if both numbers are used in connection with the Federal action number listed in block 4b.

Block 3: Provide the full address, (street, city, State, and zip code) of the person listed in block 1.

Block 4. For fees or other things of value in lieu of fees received:

a. Provide the full name, street address, city, State, and zip code of the "person" who retained you, or in whose interest you appear, to influence a decision of the Department;

b. Enter the most appropriate Federal identifying number available for the Federal action for which fees or other things of value in lieu of fees were received (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001;"

c. State the action you wanted the Department to take or not take; and

d. Provide the amount or estimated valuation of fees or other things of value in lieu of fees received.

Block 5: If applicable, for each expenditure:

a. Provide the full name, street address, city, State, and zip code of the persons to whom fees or other things of value in lieu of fees are paid for lobbying activities;

b. Provide the Social Security Number (SSN) or Employer Identification Number (EIN), as appropriate, of persons to whom fees or other things of value in lieu of fees have been paid;

c. Enter the most appropriate Federal identifying number available for the Federal action for which fees or other things of value in lieu of fees were paid to other lobbyists (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001;"

d. State the purpose of the payment (e.g., appeal decisions, deadline extension, promote client's application, waiver of requirements, etc.); and

e. Provide the amount or estimated valuation of fees or other things of value in lieu of fees paid to other lobbyists.

Block 6 a. Print or type name of person filling out this form, as authorized representative of person listed in block 1.

b. State position or title of person listed in block 6a.

c. Sign and date.

[FR Doc. 94–1308 Filed 1–31–94; 8:45 am]

BILLING CODE 4210–32–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8513]

RIN 1545–AJ31

Bad Debt Reserves of Banks; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 8513) that were published in the Federal Register on Wednesday, December 29, 1993 (58 FR 68753). The final regulations relate to bad debt reserves of large banks.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 585(c) of the Internal Revenue Code.

Need for Correction

As published, TD 8513 is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8513), which was the subject of FR Doc. 93–31577, is clarified as follows:

§ 1.585–8 [Corrected]

On page 68764, column 3, in the last sentence of § 1.585–8(e), the following is added immediately after the words "must file": "(before expiration of each applicable period of limitations under section 6501) this amended return and".

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–2135 Filed 1–31–94; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–94–001]

Special Local Regulations for Marine Events; Crawford Bay Crew Classic, Southern Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements special local regulations for the Crawford Bay Crew Classic, an annual event to be held on the Southern Branch of the Elizabeth River at Portsmouth, Virginia. The event will take place from 12 p.m. until 6 p.m., on March 25, 1994, and from 6 a.m. until 6 p.m. on March 26, 1994. The event consists of rowing vessels from different colleges competing in an intercollegiate crew competition on a course on the Elizabeth River, between Jordan Bridge and Portside. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: This regulation is effective from 11 a.m. until 6:30 p.m., on March 25, 1994, and from 5 a.m. until 6:30 p.m., on March 26, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

Drafting Information: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation: Ports Events, Inc. submitted an application requesting a permit to hold the Crawford Bay Crew Classic. The regulations in 33 CFR 100.523 will regulate the area surrounding the Crawford Bay Crew Classic on the Southern Branch of the Elizabeth River. Crew racing shells will be racing in heats starting in the vicinity of the Jordan Bridge and will finish in the vicinity of Portside, Portsmouth. This regulation is necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Marine traffic will be allowed to transit the regulated area between races. Since the main shipping channel will not be closed for extended periods of time, commercial traffic should not be severely disrupted.

Dated: January 14, 1994.

W.T. Leland,

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

[FR Doc. 94–2215 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 165

[CGD01–93–151]

RIN 2115–AA97

Safety Zone Regulations; Kill Van Kull, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; termination.

SUMMARY: The Coast Guard is cancelling the temporary final rule that established a safety zone in the waters near Bergen Point West Reach, in the Kill Van Kull of New York and New Jersey, from 8 a.m. December 7, 1993, until 8 a.m. on March 1, 1994. This safety zone was established as part of the Kill Van Kull dredging project. On December 15, 1993, the U.S. Army Corps of Engineers certified this portion of the dredging project and notified the Coast Guard that dredging operations in this area were completed.

EFFECTIVE DATE: This rule is effective on December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rosanne Trabocchi, Project Manager, Captain of the Port, New York, (211) 668–7933.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On December 7, 1993, the U.S. Coast Guard Captain of the Port, New York established a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull. This safety zone was effective from December 7, 1993, until March 1, 1994. This safety zone placed restrictions in all waters of Kill Van Kull west of the 074°08′00″ W line of longitude, east of the 074°09′36″ W line of longitude, and south of the 40°39′06″ N line of latitude.

On December 15, 1993, the U.S. Coast Guard Captain of the Port, New York received written notification that the U.S. Army Corps of Engineers certified this portion of the dredging project and that the dredging operations in this area were completed. Therefore, this rule is

no longer needed and is terminated. This rule cancels the safety zone in this area of the Kill Van Kull.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

§ 165.T01–151 [Removed]

2. Temporary section 165.T01–151 is removed.

Dated: December 15, 1993.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–2216 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Pittsburgh 94–004]

RIN 2115–AA97

Safety Zone; Ohio River and Monongahela River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River and the Monongahela River. This regulation is needed to control the movement of single hull tank barges loaded with regulated cargoes (oil and hazardous materials) into and within the regulated area due to hazards posed by severe icing along the entire length of this river. This regulation will prohibit entry into and movement within the regulated area by loaded single hull tank barges for the safety of the public and the protection of the riverine environment.

EFFECTIVE DATES: This regulation is effective from 4 p.m. on January 21, 1994 and will terminate at 4 p.m. on February 15, 1994, unless terminated at an earlier date by the Captain of the Port, Pittsburgh, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Port Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, extremely cold weather has blanketed the upper Ohio Valley during the first three weeks of January, 1994. The Monongahela River and the upper sections of the Ohio River have quickly frozen to ice thicknesses of up to one foot in several areas. Vessels attempting to transit these river areas recently have reported problems in maintaining steerage and in making way without damaging barges on ice clogged channels. These hazards are particularly acute for tows transiting with single hull tank barges loaded with regulated cargoes (oil or hazardous materials), since discharge of these cargoes from ice damaged barges would pose a significant threat to public safety and the riverine environment. These severe icing conditions on the upper Ohio River and the Monongahela River and the subsequent navigation hazards posed by this situation developed rapidly and were unexpected, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period, as immediate implementation of tank barge restrictions is needed for the public's safety and the protection of the riverine environment.

Background and Purpose

The Ohio River Valley is experiencing one of the coldest winters on record. Unusually high precipitation levels and record low temperatures have led to significant ice accumulations along the region's navigable waterways. The icing problem is especially severe in the northernmost section of this valley, which includes the upper Ohio River and the Monongahela River. Solid ice thicknesses of up to one foot have been reported along these rivers with broken ice build-ups of two or three feet located above lock and dam structures and in the bends on the Monongahela River. Several vessels have been unable to move in this ice for up to 24 hours at a time, while other vessels report that the hulls of the coal barges they are towing have been pierced by hardened brash ice floes. The severe icing of the upper Ohio River and Monongahela River poses significant navigation problems for all vessels attempting to transit this area. This ice hazard is particularly acute for tows transiting the area with single hull tank barges loaded with regulated cargoes (oil and hazardous materials), since these single hull barges are especially susceptible to puncture by hardened ice and the subsequent discharge of cargoes that pose a substantial threat to public safety and the riverine environment. By January 20, 1994, the navigability of these rivers had deteriorated (due to ice) to the point where several vessel operators elected not to move regulated cargoes in single hull tank barges within the regulated area. Since river ice conditions are not expected to improve in the short term, Captain of the Port Pittsburgh is establishing a safety zone on the upper Ohio River and the Monongahela River. Vessels other than single hull tank barges will be granted blanket authorization to proceed without restriction. Single hull tank barge movements will be restricted within the regulated area for the safety of the public and the protection of the riverine environment. Commencing at 4 p.m. on January 21, 1994, single hull tank barges loaded with regulated cargoes (oil or hazardous materials) will not be permitted to enter or transit within a safety zone extending from mile 0.0 to mile 121.6 on the Ohio River and from mile 0.0 to mile 128.7 on the Monongahela River, unless specifically authorized by the Captain of the Port Pittsburgh. This prohibition will terminate at 4 p.m. on February 15, 1994, unless terminated at an earlier date by the Captain of the Port, Pittsburgh, Pennsylvania. It does not apply to empty (containing no more than normal clingage) single hull tank barges.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to

be minimal due to its relatively short duration and the historically limited use of single hull tank barges by the marine industry in the area to be regulated.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–007 is added, to read as follows:

§ 165.T02–007 Safety Zone: Ohio River and Monongahela River.

(a) *Location.* The Ohio River between mile 0.0 and mile 121.6 and the Monongahela River between mile 0.0 to mile 128.7 is established as a safety zone.

(b) *Effective dates.* This regulation is effective at 4 p.m. on January 21, 1994 and will terminate at 4 p.m. on February 15, 1994, unless terminated at an earlier date by the Captain of the Port, Pittsburgh, Pennsylvania.

(c) *Regulations.* Single hull tank barges loaded with regulated cargoes (oil or hazardous materials) shall not be permitted to enter or transit within the regulated area unless specifically authorized by the Captain of the Port Pittsburgh. This prohibition does not apply to empty (containing no more than normal clingage) single hull tank barges. All other vessels may transit without restriction.

Dated: January 21, 1994.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 94–2214 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

COTP St. Louis 94–001

RIN 2115–AA97

Safety Zone; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River. This regulation is needed to control vessel movement during the construction of stone filled weirs in or near the navigable channel to ensure the safety of the construction workers. The regulation will prohibit navigation in the regulated area.

EFFECTIVE DATES: This regulation is effective January 7, 1994 and will terminate on February 20, 1994 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Timothy Deal, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are ENS Andrew B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the construction of the weirs can only be undertaken below certain river stages and due to the dynamic nature of the river insufficient time exists to publish a notice of proposed rule making. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the conditions present an immediate hazard.

Background and Purpose

The Army Corp of Engineers continues to improve channel maintenance through constructing passive channelizing structures. The construction of the stone filled weirs is necessary in this historically troublesome area. As a result of this construction this regulation is necessary to provide safe working conditions and navigation within the affected area.

Regulatory Evaluation

This regulation is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. To avoid any unnecessary adverse economic impact on businesses which used the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor the situation and will authorize entry into the closed area as conditions warrant. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–001 is added, to read as follows:

§ 165.T02–001 Safety Zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 129.0 and 132.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on January 7, 1994 and will terminate on February 20, 1994.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: January 7, 1994.

A.L. Peek,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 94–22130 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 92–8A]

Digital Audio Recording Devices and Media; Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office is issuing interim regulations governing the administration of filings under the Audio Home Recording Act of 1992 (AHRA). This Act deal with rights with respect to digital audio recording technology (DART), more specifically, parties who import and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium, are obligated to pay royalties. In addition to sending the royalties to the Copyright Office, the importer or manufacturer must file with the Office Statements of Account that reflect the distribution of digital audio recording devices or media.

DATES: This interim regulation is effective February 1, 1994. Comments should be in writing and received on or before April 4, 1994.

ADDRESSES: If sent by mail, ten copies should be addressed to: Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If hand delivered, ten copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marybeth Peters, Acting General Counsel, U.S. Copyright Office, Department 17, Library of Congress, Washington, DC 20540. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Background

This document relates to the filing of both quarterly and annual Statements of Account and payment of royalties due under the new DART provisions of the Copyright Code (17 U.S.C. chap. 10). On February 22, 1993, we published interim regulations on this subject (58 FR 9544 (1993)), and we are now issuing superseding interim regulations.

It should be noted that the manufacturers and importers covered by the new law are subject to other requirements, in addition to those dealt with here. For example, an obligation to file initial notices to identify the product categories and technologies distributed in the United States is provided by 17 U.S.C. 1003(b), and regulations regarding the filing of initial notices of distribution were issued by the Copyright Office at 57 FR 55464 (Nov. 25, 1992). In addition, manufacturers and importers of digital recording and interface devices must conform to the Serial Copy Management System or equivalent systems as described by 17 U.S.C. 1002 [1] as a condition of distribution in the United States.

With respect to Statements of Account, paragraph (c)(1) of 17 U.S.C. 1003 provides:

> Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual Statements of Account with respect to such distribution as the Register shall prescribe by regulation.

Royalty payments are to be calculated in accordance with 17 U.S.C. 1004 and sent to the Copyright Office under 17 U.S.C. 1003(c)(3).

Following issuance in the **Federal Register** of the 1993 interim regulation regarding Statement of Account filings, the Copyright Office published notice of an informal public meeting to discuss both the interim regulations (58 FR 29001 (May 18, 1993)) and the initial edition of the quarterly Statement of Account form (DART/Q Form). The public meeting was held at the Copyright Office on June 11, 1993. Discussion of comments follows below in section III.

The DART/Q Form as initially published incorporated practical modifications that were suggested by the parties in their comments on the written interim regulations describing what a Statement of Account should contain.

In response to comments received from interested parties, we have made some revisions in the 1993 interim regulations, and we are now issuing superseding interim regulations governing the filing of Statement of Account Forms on both a quarterly (Form DART/Q) and an annual (Form DART/A) basis. The regulations provide the filing dates, frequency of filing, and content of the quarterly and annual Statements of Account.

II. Review of 1993 Interim Regulations

A. Quarterly Statements of Account

Most of the comments and explanations accompanying the interim regulations published on February 22, 1993 are still pertinent, but some specific points are addressed here.

1. Forms

The 1993 interim regulations proposed four filings per fiscal or calendar year: Three quarterly statements, and a fourth Statement of Account combining the final quarterly statement and the required annual statement. Each manufacturing and/or importing party who distributes digital audio recording products files a quarterly form that contains information concerning product categories, technologies, transfer prices, series and model numbers, and units distributed. Comments we received concerning quarterly Statements of Account are discussed below in section III(A).

2. Filing Dates and Basis of Filing

The 1993 interim regulations required Statements of Account to be submitted

[1] *See* S. Rep. No. 294, 102d Cong., 2d Sess. 64 (1992); H. Rep. No. 873, 102 Cong. 2d. Sess., pt. 1, at 19 (1992); and H. Rep. No. 873, 102d Cong., 2d Sess., pt. 2, at 18 (1992).

on either a calendar year or fiscal year basis, at the election of the filing party. Under our proposal the elected filing basis was to remain in effect for three years, with any change in the basis to be permitted only after a request to and approval by the Copyright Office. Comments on this provision are discussed below in section III(A)(2).

The 1993 interim regulations require quarterly Statements of Account to be filed at intervals of three months. During the first stage of implementation of the AHRA the Office provided a transitional schedule that did not require a separate quarterly DART statement for the last part of 1992. The first quarterly statement covered the period from October 28, 1992 (the date of enactment of the AHRA) to the end of at least one full quarter, and was due either within 45 days following the end of the first full quarter after October 28, 1992, or by May 15, 1993, whichever was later. Later quarterly statements are due within 45 days after the end of the relevant quarters.

Annual Statements of Account should reconcile quarterly figures and provide information regarding yearly activity. Annual statements are due two months after the close of the calendar or fiscal year covered by the statement. Comments regarding annual Statements of Account are discussed in section III(B).

3. Late Payments, Overpayments, Underpayments, and Refunds

The 1994 interim regulations allow for corrections of quarterly and annual Statements of Account to rectify errors in payments of royalties. An underpayment of five dollars ($5.00) or less will require no action by the Office. The Licensing Division will notify the manufacturing or importing party of underpayments of more than five dollars so that party can make the necessary corrections or amended filings.

If royalty payments are not made on time, copyright owners suffer from loss of the current value of funds. Therefore, interest will be imposed on underpayments and late payments.

The earlier interim regulations provide for refunds to be made by the Copyright Office in connection with overpayments accompanying annual Statements of Account. These superseding interim regulations will also allow refunds of overpayments accompanying quarterly DART statements.

4. Credits for Returns or Exports

The earlier 1993 interim regulations permitted credits to be taken for returned or unsold recording devices; the credit was to be taken in the first annual Statement of Account covering the actual period when the recording devices were returned, or in the next succeeding annual Statement of Account. The Copyright Office has decided to modify this policy in this superseding interim regulation.

As revised, this new interim regulation permits manufacturers and importers to take a credit for returns of both recording devices and media on either quarterly or annual Statements of Account. Credits may be taken when products are exported or returned to the manufacturers or importers as unsold or defective. Whenever returned products for which credit has been taken are later distributed in the United States, the statutory royalty must be paid, and the distribution must be reported on the appropriate Statement of Account. The Copyright Office has also decided to allow a credit for exports. These regulations give filing parties two years to take a credit.

5. Access to Statements of Account

In accordance with 17 U.S.C. 1003(c)(2), quarterly and annual Statements of Account will not be made part of the Copyright Office's public records or directly or indirectly disclosed to the general public. Specific regulations governing confidential access by interested parties, as defined in the AHRA, will be issued separately.

III. Discussion of Comments

A. Quarterly Statements of Account

The Office received two comments responding to the interim regulations published on February 22, 1993. One was filed by the American Institute of Certified Public Accountants (AICPA), and the other was from the DART Coalition. In addition, the oral comments made at the Office's public meeting on this subject are essentially reflected in the parties' written comments, which are summarized here.

1. The American Institute of Certified Public Accountants (AICPA)

The AICPA is a national professional association representing certified public accountants (CPA's) in public practice, industry, government, and education. The group aids in developing standards for audits and other services provided by CPAs, in administering the Uniform CPA Examination, and in monitoring and enforcing compliance with the profession's technical and ethical standards. The AICPA also monitors and analyzes federal regulations that may affect accounting and related matters.

The AICPA did not comment on the quarterly form. Their comments related to CPAs' audits of annual DART Statements of Account, and are discussed below at section III(B).

2. The DART Coalition

The DART Coalition consists of representatives of the Electronic Industries Association, the National Music Publishers' Association, Inc. and its subsidiary The Harry Fox Agency, Inc., the Recording Industry Association of America, the Home Recording Rights Coalition, the Alliance of Artists and Recording Companies, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the American Federation of Musicians of the United States and Canada, the American Federation of Television and Radio Artists, Copyright Management, Inc., and the Songwriters Guild of America.

The Copyright Office had proposed in the 1993 interim regulation that a filing party be locked into election of a calendar or fiscal filing basis for three years. The Coalition suggested that, where a filing party shows good cause, it be allowed to change its accounting period (calendar or fiscal) at any time. The DART Coalition noted that, if its suggestion were to be accepted, a filing party should not be allowed to change its filing status to alter the total aggregate royalty payments. They suggested that the regulations require notification of changes in filing status to include provisions to equalize total aggregate payments under the new basis with those that would have been made under the earlier basis. DART Coalition comments at 3.

The DART Coalition also suggested clarification with regard to products subject to Statements of Account and royalty payment obligations: except for "credits for returns and exported merchandise and subsequent obligations with respect to products for which credits have been claimed," the obligation should apply only to units first distributed in the United States during the appropriate filing period. DART Coalition comments at 5.

The DART Coalition suggested that in the reporting space for tracking audio recording devices and media manufactured and distributed or imported and distributed by a party, the terms "product category" and "technology" be expressed in the plural, and "space should be provided for multiple product categories and technologies." DART Coalition comments at 6.

In addition, the group suggested modification of the requirements governing presentation of model number and transfer price information to permit aggregation of products of the same model (or series) number with the same applicable transfer price. DART Coalition comments at 6–7.

Regarding information to be provided for stand-alone devices and devices first distributed with other devices, the Coalition indicated that the Office had not provided enough fee codes in the quarterly form to cover all the types of devices that have to be reported. DART Coalition comments at 7–9.

The Coalition also suggested that clarification be made as to when royalties are payable. It recommended that language in the Office's final regulations should indicate that royalties are due upon the filing of quarterly or annual Statements of Account, not upon distribution. DART Coalition comments at 9. In addition, the Coalition suggested that because multiple transfer prices may apply to a given product series or model, the language in the interim regulations should be modified to provide for this possibility. *Id.*

Finally, the Coalition suggested that, regarding treatment of monies that may be attributable to 1992 activities, any initial quarterly Statements of Account that include partial fiscal or calendar quarters ending in 1992 include estimates of payments attributable to 1992 and 1993 quarters. DART Coalition comments at 10.

B. Annual Statements of Account

Comments about annual Statement of Account forms were based upon the language of the 1993 interim regulations governing the contents of annual forms, rather than a draft of the form itself.

1. The American Institute of Certified Public Accountants

AICPA argued that the CPA who audits an annual statement should be required to audit a separate "schedule of royalties" (a document not anticipated or mentioned in the 1993 interim regulation) rather than the annual statement itself. AICPA comments at 1. The comments suggested that this separate schedule should relate only to the number of devices and media distributed, their transfer prices, and the cumulative amount of royalties. AICPA said that CPAs should not be associated with the information contained in the fourth quarterly statement or the entire annual statement, but instead should comment only on the data that has been audited. AICPA wrote:

> [W]e recommend that in addition to the Annual Statement of Account, management prepares a "schedule of royalties" which the CPA would audit. The appropriate information would be taken from the Annual Statement of Account and, therefore, not result in additional cost.

AICPA comments at 2. AICPA proposed that the auditing CPA should also be permitted to "express a qualified or adverse opinion or a disclaimer of an opinion, and other comments." AICPA comments at 1. This would meet generally accepted auditing standards, and would apply in situations where conditions or circumstances beyond the auditor's control cannot be audited, corrected, or honestly vouched for by the CPA.

In addition, AICPA proposed that the language in the illustrative CPA report which the Office had included in the 1993 interim regulations be revised to be "consistent with current authoritative auditing literature." Id. Sample language was suggested to provide information about accurate usage of terms associated with accounting procedures. Regarding correct use of terms of art, or language used by CPAs in the exercise of their duties, the AICPA suggested correction of proposed language of section (4)(ii)(A) of the 1993 interim regulation. The proposed language showing that CPAs "certify" financial statements should be changed, because CPAs actually "audit" such documents. The two terms have different meanings that give CPAs different responsibilities. AICPA comments at 3.

Finally, the AICPA requested extending the filing date for annual audited Statements of Account from two months to 90 or 120 days because CPAs are busiest during January and February. AICPA comments at 4.

2. The DART Coalition

The Coalition commented on the 1993 interim regulations' provisions governing the annual summary of the number of devices and media manufactured or imported and distributed, and recommended several changes. Rather than follow the Office's proposed breakdown of the summary into "product category," "technology," and "model number," the group preferred an integrated summary based on models within each category and technology. DART Coalition comments at 13.

The Coalition also commented on the provision on credits for returns or exports. It was suggested that the credit provision be

> * * * clarified to make clear that credits are applicable to units on which a royalty payment has been made by the manufacturing party that are (a) returned to the manufacturing party less than two years following first distribution by the manufacturing party and (b) originally 'distributed' (i.e., transferred by the manufacturing party for ultimate transfer to consumers in the United States), which are thereafter exported by the manufacturing party within two years following first distribution. A credit for exports would, therefore, arise where the manufacturing party, after an initial, internal distribution on which a royalty payment has been made, subsequently exports.

DART Coalition comments at 14–15. Further clarification was suggested to emphasize that a royalty payment is not triggered until distribution takes place, and that, if a product is never distributed, no royalty is paid and no need exists for a credit. DART Coalition comments at 15. In addition, the Coalition asserted that an individual listing of returned or exported digital audio recording products, as suggested by the Office, would not be as efficient as presenting information by model, with transfer price and applicable royalty credit "in a format comparable to that provided for the quarterly Statement of Account." DART Coalition comments at 16.

The Coalition had no comments, at the time of filing its comments on the 1993 interim regulation, regarding accounting certification.

IV. Public Meeting

On June 11, 1993, the Copyright Office held a public meeting intended to exchange comments and information regarding the quarterly Statement of Account as proposed in the 1993 interim regulations and as published in the initial version of the DART/Q Form. Comments were invited as well about the annual Statement of Account form, which had been discussed in the interim regulations, but had not yet been published. 58 FR 29001 (May 18, 1993). The meeting was informal and no recording was made of the discussion, much of which covered points raised in the previously-submitted written comments.

One new matter was raised: The possible use of spreadsheets as part of the Statement of Account reporting form. The Office considers this a suggestion that should be explored, but believes it does not need to be incorporated in the regulations. The Licensing Division is currently discussing the use of computer-generated forms with interested parties.

V. Policy Decisions

The Copyright Office has examined our 1993 interim regulations in light of

the comments received. We have accepted most of the suggestions made by the parties, noting that they involve solutions to practical problems and that the AHRA itself is the result of a cooperative agreement among the interested parties.

The 1993 interim regulations published in 57 FR 9544 (Feb. 22, 1993), are superseded by this second set of 1994 interim regulations. Several important modifications and additions are incorporated, including treatment of the auditor's report to accompany the annual Statement of Account, and fine tuning of the specific contents of quarterly and annual statements. We have also decided to provide for credits and for refunds on a quarterly as well as an annual basis, for both devices and media, and to extend the credit to situations where the products are exported. We also eliminate the former requirement that a manufacturing or importing party filing DART statements is locked into its choice of a filing basis for three years unless permission to change is sought from and granted by the Register of Copyrights. Although parties filing DART statements must note on the forms whether they are filing on a calendar or a fiscal year basis, changes in filing basis may be made by notifying the Register at least two months before filing on the changed basis, with a written statement of reasons as to why the change is to be made and a statement that such a change will not affect the aggregate royalty due under the earlier basis.

Based upon AICPA's recommendations concerning appropriate auditing terminology and procedures, the Copyright Office is adopting procedures for the primary auditor's report that allow the auditor to make his or her report either on or attached to the DART/A Form.

The DART Coalition's concerns regarding the manner in which products are to be aggregated on the Statements of Account by product and technology has been addressed by clarifying that the Statement of Account permits the reporting of each unique combination of product category, technology, series or model number, fee code, source code, and transfer price.

The Office also received comments during its rulemaking proceeding RM 93–2, Auditing of and Confidential Access to Statements of Account, that should be noted. The Electronic Industries Association (EIA), commented that an audit may cost a party thousands of dollars, and could "create a barrier that would keep small manufacturers or importers out of the digital audio market," a negative result not contemplated by the Act. EIA comments at 17. EIA suggested that small manufacturers or importers would benefit from an elective exemption from the Act's audit requirement. The exemption would be available for "filers that either (i) Do not engage an independent CPA to conduct an annual financial audit or (ii) file an annual statement of account showing a royalty payment due of less than five thousand dollars ($5,000)." *Id.* The Office has considered this proposal, but has concluded that it should not provide such a waiver in these regulations covering the primary audit.

In an effort to facilitate easy and accurate filing of Statements of Account, the Office has revised the DART/Q Form since its original issue. Copies of the most current DART/Q and the new DART/A Forms are available upon writing the Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557, by calling (202) 707–8150 or by facsimile (202) 707–0905. Forms may be requested via facsimile for informational purposes, but facsimile copies may not be submitted to the Office.

List of Subjects in 37 CFR Part 201

Copyright, Digital audio recording products.

Interim Regulations

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

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; § 201.28 is also issued under Pub. L. 102–563, 106 Stat. 4237.

2. Section 201.28 is revised to read as follows:

§ 201.28 Statements of Account for digital audio recording devices or media.

(a) *General.* This section prescribes rules pertaining to the filing of Statements of Account and royalty fees in the Copyright Office as required by 17 U.S.C. 1003(c) and 1004, in order to import and distribute, or manufacture and distribute, in the United States any digital audio recording device or digital audio recording medium.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Annual statement of account* is the statement required under 17 U.S.C. 1003, to be filed no later than two months after the close of the accounting period covered by the annual statement.

(2) *Device* and *medium* have the same meaning as *digital audio recording device* and *digital audio recording medium*, respectively, have in 17 U.S.C. 1001.

(3) *Digital audio recording product* means digital audio recording devices and digital audio recording media.

(4) *Generally accepted auditing standards (GAAS)*, means the auditing standards promulgated by the American Institute of Certified Public Accountants.

(5) *Manufacturing or importing party* refers to any person or entity that manufactures and distributes, and/or imports and distributes, any digital audio recording device or digital audio recording medium in the United States, and is required under 17 U.S.C. 1003 to file with the Copyright Office quarterly and annual Statements of Account.

(6) *Product category of a device or medium* is a general class of products made up of functionally equivalent digital audio recording products with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units ("boomboxes"); portable personal recorders; stand-alone home recorders ("tape decks"); home combination systems ("rack systems"); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media, such as 2½ inch, 3 inch, or 5 inch discs.

(7) *Primary auditor* is the certified public accountant retained by the manufacturing or importing party to audit the amounts reported in the annual Statement of Account submitted to the Copyright Office. The primary auditor may be the certified public accountant engaged by the manufacturing or importing party to perform the annual audit of the party's financial statement.

(8) *Quarterly statement of account* is the statement accompanying royalty payments required under 17 U.S.C. 1003, to be filed for each of the first three quarters of the accounting year, and no later than 45 days after the close of the quarterly period covered by the statement.

(9) *Technology of a device or medium* is a digital audio recording product-type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassettes (DCC), or recordable compact discs, including minidiscs (MD).

(10) *Distribute, manufacture, transfer price,* and *serial copying* have the meanings set forth in 17 U.S.C. 1001

(c) *Accounting periods and filing deadlines.* (1) *Election of filing basis.* Statements of Account may be filed on either a calendar or fiscal year basis at the election of the manufacturing party. The election of a calendar or fiscal year basis must be made when the manufacturing or importing party files its first quarterly Statement of Account by appropriate designation on the Form DART/Q submitted. Thereafter the specific calendar or fiscal-year accounting period must be designated on each quarterly Statement of Account. The filing basis may be changed at any time upon notification in writing to the Register of Copyrights, accompanied by a statement of reasons as to why the change is to be made and a statement that such change will not affect the aggregate royalties due under the earlier basis. The notification of change in filing basis must be made at least two months before the date the next quarterly Statement of Account is due to be filed.

(2) *Quarterly filings.* Quarterly Statements of Account shall be filed on Form DART/Q and shall cover a three-month period corresponding to the calendar or fiscal year of the filing party. A quarterly statement shall be filed no later than 45 days after the close of the period it covers.

(3) *Annual filings.* Annual Statements of Account shall be filed on Form DART/A and shall cover both the fourth quarter of an accounting year and the aggregate of the entire year corresponding to the calendar or fiscal accounting year elected. An annual statement shall be filed no later than two months after the close of the period it covers. As a transitional measure, however, the first annual Statement of Account filed after October 28, 1992, is not due until March 1, 1994, or two months after the end of the calendar or fiscal year in which the manufacturing or importing party first filed a quarterly Statement of Account, whichever is later. The first annual Statement of Account shall cover the entire period from October 28, 1992, to the end of the full accounting year. The appropriate royalty payment, calculated according to the instructions contained in Form DART/A, shall accompany the annual Statement of Account covering royalties due for the filing year: that is, royalties for the fourth quarter and any additional royalties that are due because of adjustments in the aggregate amounts of devices or media distributed.

(4) *Early or late filings.* Statements of Account and royalty fees received before the end of the particular accounting period covered by the statement will not be processed by the Office. The statement must be filed after the close of the relevant accounting period. Statements of Account and royalty fees received after the 45-day deadline for quarterly statements or the two month deadline for annual statements will be accepted for whatever legal effect they may have and will be assessed the appropriate interest charge for the late filing.

(d) *Forms.* (1) Each quarterly or annual Statement of Account shall be submitted on the appropriate form prescribed by the Copyright Office. Computation of the royalty fee shall be in accordance with the procedures set forth in the forms and this section. Statement of Account forms are available from the Licensing Division, Library of Congress. Forms and other information may be requested from the Licensing Division by facsimile transmission (FAX), but copies of Statement of Account forms transmitted to the Office by FAX will not be accepted.

(2) Forms prescribed by the Copyright Office are designated Quarterly Statement of Account for Digital Audio Recording Products (Form DART/Q) and Annual Statement of Account for Digital Audio Recording Products (Form DART/A).

(e) *Contents of quarterly Statements of Account.* (1) *Quarterly period and filing.* Any quarterly Statement of Account shall cover the full quarter of the calendar or fiscal accounting year for the particular quarter for which it is filed. A separate quarterly statement shall be filed for each quarter of the first three quarters of the accounting year during which there is any activity relevant to the payment of royalties under 17 U.S.C. 1004. The annual Statement of Account identified in paragraph (f) of this section incorporates the fourth quarter of the accounting year.

(2) *General content.* Each quarterly Statement of Account shall be filed on Form DART/Q, the "Quarterly Statement of Account for Digital Audio Recording Products," and shall include a clear statement of the following information:

(i) A designation of the calendar or fiscal year of the annual reporting period;

(ii) A designation of the period, including the beginning and ending day, month, and year of the period covered by the quarter;

(iii) The full legal name of the manufacturing and/or importing party, together with any "doing-business-as" names used by such person or entity for the purpose of conducting the business of manufacturing, importing, or distributing digital audio recording products;

(iv) The full mailing address of the manufacturing or importing party, including a specific number and street name, or rural route and box number, of the place of business of the person or entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location;

(v) A designation of the manufacturing or importing party status, i.e., "Manufacturer," "Importer," or "Manufacturer and Importer;"

(vi) The designation "Product Categories" together with the product categories of the digital audio recording products manufactured or imported and distributed during the quarter covered by the statement;

(vii) The designation "Technologies" together with the technologies of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(viii) The designation "Series or Model Number" followed by the model or series numbers of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(ix) The "fee code" associated with the product;

(x) The "source code" for the product category;

(xi) The "transfer price" of the product;

(xii) The "number of units distributed" for each product;

(xiii) The "minimum fee per unit" for each product;

(xiv) The statutory royalty "rate" for digital audio recording devices or media;

(xv) The "rate fee" for each product;

(xvi) The appropriate "maximum fee per unit" for each product;

(xvii) The "maximum fee" for each product; and

(xviii) A computation of the total royalty payable for the quarter covered by the statement. Filing parties may not round off the figures they list in Space C, the computation section of the form, except for the figure representing the total royalty fee due; in that case, numbers ending in 50 to 99 cents may be rounded up to the next dollar, and numbers ending in one to 49 cents may be rounded down to the next dollar;

(3) *Royalty payments and accounting.* (i) The royalty specified in 17 U.S.C. 1004 shall accompany the quarterly and annual Statements of Account. No royalty is payable for redistribution of

the same product item unless a credit has been taken for such items. Where royalties are payable for the period covered by the statement, the Statement of Account shall contain the following information for each unique combination of product category, technology, series or model number, fee code, source code, and transfer price:

(A) The total number of digital audio recording media distributed, multiplied by the statutory royalty rate of three percent (3%) of the transfer price;

(B) The total number of digital audio recording devices distributed for which the statutory royalty rate of two percent (2%) of the transfer price is payable, multiplied by such percentage rate of the transfer price;

(C) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to eight dollars ($8.00), multiplied by such eight dollar amount;

(D) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to twelve dollars ($12.00), multiplied by such twelve dollar amount; and

(E) The total number of digital audio recording devices distributed for which the statutory minimum royalty is limited to one dollar ($1.00), multiplied by such one dollar amount.

(ii) The amount of the royalty payment shall be calculated in accordance with the instructions specified in the quarterly Statement of Account form. Payment of the royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights.

(4) *Reduction of royalty fee.* (i) Section 1004(a)(2)(A) of title 17 U.S. Code, provides an instance in which royalty payments may be reduced if the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

(ii) Notice of this provision together with directions for possible application to a product is contained in the DART/Q Form.

(5) *Contact party.* Each Statement of Account shall include the name, address, and telephone and facsimile (FAX) numbers of an individual whom the Copyright Office can write or call about the Statement of Account.

(6) *Credits for returned or exported products.* When digital audio recording products first distributed in the United States for ultimate transfer to United States consumers are returned to the manufacturer or importer as unsold or defective merchandise, or are exported, the manufacturing or importing party may take a credit to be deducted from the royalties payable for the period when the products were returned or exported. The credit may be taken only for returns or exports made within two years following the date royalties were paid for the products. This credit must be reflected in the manufacturing or importing party's quarterly or annual Statement of Account. If the manufacturer or importer later redistributes in the United States any products for which a credit has been taken, these products must be listed on the Statement of Account, and a new computation of the royalty fee must be made based on the transfer price of the products at the time of the new distribution.

(7) *Oath and signature.* Each Statement of Account shall include the handwritten signature of an authorized officer, principal, or agent of the filing party. The signature shall be accompanied by:

(i) The printed or typewritten name of the person signing the quarterly Statement of Account;

(ii) The date the document is signed;

(iii) The following certification:

I, the undersigned, hereby certify that I am an authorized officer, principal, or agent of the "manufacturing or importing party" identified in Space B.

Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et. seq.*

(f) *Contents of annual Statements of Account.* (1) *General contents.* Each annual Statement of Account shall be filed on form DART/A, "Annual Statement of Account for Digital Audio Recording Products." It must be filed by any importer or manufacturer that distributed in the United States, during a given calendar or fiscal year, any digital audio recording device or digital audio recording medium. The annual statement shall cover the aggregate of the distribution of devices and media for the entire year corresponding to the calendar or fiscal year elected. The annual Statement of Account shall contain the information, oath, and certification prescribed in paragraphs (e)(2)(i) through (e)(7)(iii) of this section, and shall cover the entire accounting year, including the fourth quarter distribution, and shall also provide for the reconciliation of the aggregated accounting of digital audio recording devices and media for the reported accounting year.

(2) *Reconciliation.* Any royalty payment due under sections 1003 and 1004 of title 17 that was not previously paid with the filing party's first three quarterly Statements of Account, shall be reconciled in the annual statement. Reconciliation in the annual Statement of Account provides for adjustments for reductions, refunds, underpayments, overpayments, credits, and royalty payments paid in Quarters 1, 2, and 3, and shall be computed in accordance with the instructions included in the annual Statement of Account. Errors that require reconciliation shall be corrected immediately upon discovery.

(3) *Accountant's opinion.* Each annual Statement of Account or any amended annual Statement of Account shall be audited by the primary auditor as defined in paragraph (b)(7) of this section. An amendment may be submitted to the Office either as a result of responses to questions raised by a Licensing Division examiner or on the initiative of the manufacturing or importing party to correct an error in the original Statement of Account.

(i) The audit shall be performed in accordance with generally accepted auditing standards (GAAS). The audit may be performed in conjunction with an annual audit of the manufacturing or importing party's financial statements.

(ii) The CPA shall issue a report, the "primary auditor's report," reflecting his or her opinion as to whether the annual statement presents fairly, in all material respects, the number of digital audio recording devices and media that were imported and distributed, or manufactured and distributed, by the manufacturing or importing party during the relevant year, and the amount of royalty payments applicable to them under 17 U.S.C. chapter 10, in accordance with that law and these regulations.

(iii) The primary auditor's report shall be filed with the Copyright Office together with the annual Statement of Account, within two months after the end of the annual period for which the annual Statement of Account is prepared. The report may be qualified to the extent necessary and appropriate.

(iv) The Copyright Office does not provide a specific form, or require a specific format, for the CPA's review; however, in addition to the above, certain items must be named as audited items. These include the variables necessary to complete Space C of the Statement of Account form. The CPA may place his or her opinion, which will serve as the "primary auditor's report," in the space provided on Form

DART/A, or may attach a separate sheet or sheets containing the opinion.

(v) The auditor's report shall be signed by an individual, or in the name of a partnership or a corporation, and shall include city and state of execution, certificate number, jurisdiction of certificate, and date of opinion. The certificate number and jurisdiction are not required if the report is signed in the name of a partnership or a corporation.

(g) *Documentation.* All filing parties shall keep and retain in their possession, for at least three years from the date of filing, all records and documents necessary and appropriate to support fully the information set forth in quarterly and annual statements that they file.

(h) *Corrections, supplemental payments, and refunds.* (1) *General.* Upon compliance with the procedures and within the time limits set forth in this paragraph (h), corrections to quarterly and annual Statements of Account will be placed on record, and supplemental royalty fee payments will be received for deposit, or refunds without interest will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by the quarterly or annual Statement of Account, any of the information given in the statement filed in the Copyright Office is incorrect or incomplete; or

(ii) Where, for any reason except that mentioned in paragraph (h)(2) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to quarterly or annual Statements of Account will not be placed on file, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, cases where digital audio recording media were exported) took place later.

(3) Requests that corrections to annual or quarterly Statements of Account be accepted, that fee payments be accepted, or that refunds be issued shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request shall be made in writing and must clearly identify the manufacturing or importing party making the request, the accounting period in question, and the purpose of the request. A request for a refund must be received in the Copyright Office before the expiration of two months from the last day of the applicable Statement of Account filing period. A request made by telephone or by telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, is received in the Copyright Office within the two-month period, and a written request meeting all the conditions of this paragraph (h)(3) is also received in the Copyright Office within 14 days after the end of such two-month period.

(ii) The request must clearly identify the incorrect or incomplete information formerly filed and must provide the correct or additional information.

(iii) In the case where a royalty fee was miscalculated and the amount deposited with the Copyright Office was too large or too small, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with 28 U.S.C. 1746, made and signed in accordance with paragraph (e)(7) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv) Following final processing, all requests will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve manufacturing or importing parties of their full obligations under title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(v)(A) The request must be accompanied by a filing fee in the amount of $20 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or a certified check, cashier's check, or money order, payable to the Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) Requests that a supplemental royalty fee payment be deposited must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(vi) All requests submitted under paragraph (h) of this section must be signed by the manufacturing or importing party named in the Statement of Account, or the duly authorized agent of that party in accordance with paragraph (e)(7) of this section.

(vii) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the manufacturing or importing party named in the Statement of Account. The Copyright Office will not pay interest on any royalty refunds.

(i) *Examination of Statements of Account by the Copyright Office.* (1) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division will examine the statement for obvious errors or omissions appearing on the face of the documents and will require that any such obvious errors or omissions be corrected before final processing of the document is completed. If, as the result of communications between the Copyright Office and the manufacturer or importer, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record.

(2) Completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall not be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty was deposited, that the statutory time limits for filing had been met, or that any other requirements of 17 U.S.C. 1001 *et. seq.* were fulfilled.

(j) *Interest on late payments or underpayments.* (1) Royalty payments submitted as a result of late payments or underpayments shall include interest, which shall begin to accrue on the first day after the close of the period for filing Statements of Account for all late payments or underpayments of royalties occurring within that accounting period. The accrual period for interest shall end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by the manufacturing or importing party, if the

payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period shall end on the date of actual receipt by the Copyright Office.

(2) The interest rate applicable to a specific accounting period shall be the Current Value of Funds rate in accordance with the Treasury Financial Manual, at 1 TFM 6–8025.40, in effect on the first business day after the close of the filing deadline for the relevant accounting period. The interest rate for a particular accounting period may be obtained by consulting the Federal Register for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is five dollars ($5.00) or less.

(k) *Confidentiality of Statements of Account.* Public access to the Copyright Office files of Statements of Account for digital audio recording products shall not be provided. Access will only be granted to interested copyright parties in accordance with regulations prescribed by the Register of Copyrights pursuant to 17 U.S.C. 1003(c).

Dated: January 26, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 94–2066 Filed 1–31–94; 8:45 am]

BILLING CODE 1410–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI31–02–6033; AMS–FRL–4830–1]

Approval and Promulgation of a Commitment To Adopt a Rule for Reasonably Available Control Technology for Oxides of Nitrogen for Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is conditionally approving a revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision was submitted by the State to satisfy Clean Air Act (Act) requirements for adoption of rules for application of reasonably available control technology (RACT) for oxides of nitrogen (NO_x) in the Milwaukee, Kewaunee, Manitowoc, and Sheboygan ozone nonattainment areas in Wisconsin. The Milwaukee area consists of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties. In this notice, USEPA is acting not on the rules themselves, but on a commitment by the State to submit NO_x RACT rules at a later date.

EFFECTIVE DATE: This action will be effective March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The Wisconsin Department of Natural Resources (WDNR) has committed to submit NO_x RACT rules to USEPA as a revision to its ozone SIP within 1 year after USEPA approves the commitment. WDNR has not yet submitted the rules because sufficient evidence does not yet exist to prove a need for controlling major stationary source NO_x emissions in the Wisconsin ozone nonattainment areas. WDNR is performing photochemical grid modeling to determine whether NO_x controls on major stationary sources would be beneficial. Modeling results are not yet available. WDNR submitted the commitment to USEPA on November 15, 1992, and submitted additional information to supplement the original submittal on January 15, 1993, and March 29, 1993.

II. Analysis of State Submittal

The criteria for approving a NO_x RACT committal is set forth in section 110(k)(4) of the Act and in several documents described in USEPA's August 4, 1993, notice of proposed rulemaking for approval of Wisconsin's NO_x RACT committal, 58 FR 41451–41452. The memoranda of July 22, 1992, and September 16, 1992, from Deputy Assistant Administrator Michael Shapiro to the USEPA Air Division Directors, set forth the following acceptability criteria for committal SIPs due November 15, 1992: (1) The State must provide notice and public hearing on the commitment; (2) the commitment must include the basis for a conditional approval; and (3) the commitment must include a State work plan detailing any specific measures to be adopted, the steps that will be taken to adopt the measures, and the schedule for adoption of those measures. The State has satisfied all of these requirements in its commitment.

Two additional guidance documents, the NO_x Supplement to the General Preamble (57 FR 55620–55629) and the February 2, 1993, memorandum entitled "Questions and Answers on Nitrogen Oxides Emissions Policy," from G.T. Helms to the Air Branch Chiefs, set forth the following criteria for determining the acceptability of a NO_x RACT committal SIP for conditional approval: (1) The committal must describe the reason for the committal instead of a full SIP submittal; (2) the committal must document that credible photochemical grid modeling is not available or did not consider the effects of NO_x reductions; (3) the committal must identify the resources to complete the photochemical grid modeling; and (4) the committal must include a schedule outlining the milestones that have been and will be achieved toward completion of the modeling activities and the NO_x RACT rules. In its schedule, the State must commit to adopt NO_x RACT rules and to submit the rules to USEPA within 1 year after USEPA approval of the committal. The State has complied with all of these requirements in its committal. Most importantly, the State has demonstrated that photochemical grid modeling is progressing under the Lake Michigan Ozone Control Program, and the State has committed to submit NO_x RACT rules to USEPA within 1 year after USEPA approval of the State committal. A detailed analysis of the submittal can be found in an April 28, 1993, Region 5 technical support document proposing conditional approval of this revision to the Wisconsin SIP for ozone. The USEPA proposed to approve the NO_x RACT committal in an August 4, 1993, **Federal Register** document. No comments were received regarding USEPA's proposed action.

III. Implication of Action

USEPA conditionally approves of the State's commitment to adopt NO_x RACT rules for the Milwaukee, Kewaunee, Manitowoc, and Sheboygan areas in Wisconsin as a revision to the ozone SIP. If the State fails to submit adopted NO_x RACT rules 1 year after USEPA approval of the commitment, USEPA will propose to disapprove the commitment as failing to comply with section 110(k)(4) of the Act. If the State fails to adopt legislative authority or meet other applicable milestones in the commitment SIP schedule, USEPA may also disapprove the commitment as failing to comply with section 110(k)(4), if such failure to meet a specific

milestone indicates that the State may not be able to meet the submission date.

If, after considering comments on the final rulemaking, USEPA issues a final disapproval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. The clock will begin at the time USEPA issues the final disapproval or at the time USEPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and USEPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, USEPA must impose one of the sanctions under section 179(b) highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m), USEPA has discretionary authority to impose sanctions at any time after a final disapproval.

IV. Executive Order (EO) 12291

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, 54 FR 2222, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA 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 USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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.

Conditional approvals under sections 110 and 301, subchapter I, part D of the 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 affected small entities. 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 USEPA 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).

If USEPA issues a final disapproval or the conditional approval is converted to disapproval under section 110(k) of the Act based upon the 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, USEPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities, because it does not remove existing State requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 12, 1994.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Subpart YY is amended by adding § 52.2569 to read as follows:

§ 52.2569 Identification of plan—conditional approval.

(a) Revisions to the plan identified in § 52.2570 were submitted on the date specified.

(1) On November 15, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted a commitment to adopt oxides of nitrogen (NO_x) reasonably available control technology (RACT) rules as a proposed revision to the State's ozone State Implementation Plan (SIP). After holding a public hearing on the submission, WDNR resubmitted the SIP on January 15, 1993. In this submission, the State commits to adopt NO_x RACT rules within 1 year after United States Environmental Protection Agency (USEPA) approval of State's commitment. On March 29, 1993, WDNR further committed to submit these rules to USEPA as a revision to the SIP 1 year after USEPA approval of the State's commitment. In this section, USEPA conditionally approves the State's revision to the Wisconsin SIP for ozone.

[FR Doc. 94–2168 Filed 1–31–94; 8:45 am]

BILLING CODE 6560–50–F–M

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40 CFR Part 271

[FRL–4829–2]

Alabama; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the provisions contained in RCRA Cluster I. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Alabama's application and has made a decision, subject to public review and comment, that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste program revisions. Alabama's application for program revisions is available for public review and comment.

DATES: Final authorization for Alabama's program revisions shall be effective April 4, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Alabama's program revision application must be received by the close of business, March 3, 1994.

ADDRESSES: Copies of Alabama's program revision application are available during 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36130: (205) 271–7737; 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 (Public Law 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 124260 through 268 and 270.

B. Alabama

Alabama initially received final authorization for its base, RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992, July 12, 1992, December 21, 1992, May 17, 1993, and November 23, 1993. On July 1, 1992, Alabama submitted program revision application for additional program approvals. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's application and has made an immediate final decision that Alabama'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 Alabama. The public may submit written comments on EPA's immediate final decision up until March 3, 1994. Copies of Alabama's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Alabama's program revisions shall become effective April 4, 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.

Alabama is today seeking authority to administer the following Federal requirements promulgated on July 1, 1990 through June 30, 1991.

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 80:			
Toxicity Characteristic; Hydrocarbon Recovery Operations.	55 FR 40834, 56 FR 3978, 56 FR 13406.	10/5/90, 2/1/91, 4/2/91	335–14–2–.01(4)(b)11.
Checklist 81:			
Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listing (F037 and F038).	55 FR 46354 ... 55 FR 51707 ...	11/2/90, 12/17/90	335–14–2–.04(2)(a)(b). 335–14–2–Appendix VII.
Checklist 82:			
Wood Preserving Listings	55 FR 50450 ...	12/6/90	335–14–1–.02(1). 335–14–2–.1(4)(a)9. 335–14–2–.04(2)(a). 335–14–2–.4(6)(a)(b)(c). 335–14–2–Appendix III, VII. 335–14–3–.03(5)(a)(2), (a)(3)(a)(4)(a)(5). 335–14–5–.10(1). 335–14–5–.23(1)(a)(b). 335–14–5–.23(2)(a),(b),(c),(d). 335–14–5–.23(5)(a-o). 335–14–5–.23(4)(a),(b). 335–14–5–.23(5)(a),(b),(c). 335–14–5–.23(6). 335–14–6–.10(1). 335–14–6–.23(1),(a),(b) (2)(a),(b),(c),(d). 335–14–6–.23(3)(4)(a-n). 335–14–6–.23(5)(a-c). 335–14–6–.23(6)(c)2. 335–14–8–.02(13)(a-c).
Checklist 83:			
Land Disposal Restrictions for Third Scheduled Wastes; Technical Amendments.	56 FR 3864	1/31/91	335–14–2–.01(3)(d)1. 335–14–2–.03(1)(b). 335–14–2–.04(2)(a).

Federal requirement	FR reference	FR promulgation date	State authority
			335–14–3–.01(1)(2)(c).
			335–14–3–.03(5)(d)(4).
			335–14–9–.01(2)(d).
			335–14–9–.01(2)(f)1.2, (g)1.–7.
			335–14–9–.01(7).
			335–14–9–.01(9).
			335–14–9–.03(4).
			335–14–9–.03(6).
			335–14–9–.04(1)(2)(3)(4).
			335–14–9–Appendix IV, V, VII, VIII, and IX.
			335–14–8–.04(3).
Checklist 84:			
Toxicity Characteristic; Chloroflourocarbon Refrigerants.	56 FR 5910	2/13/91	335–14–2–.01(4)(b)12.
Checklist 86:			
Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment.	56 FR 7567	2/25/91	335–14–2–.04(4)(e). 335–14–2–Appendix VIII.
Checklist 87:			
Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment.	56 FR 19290 ...	4/26/91	335–14–5–.27(1)(4)(6).
			335–14–5–.28(3).
			335–14–6–.02(4)(b)6.
			335–14–6–.05(4)(b)3.
			335–14–6–.27(1).
			335–14–7–.27(5).
			335–14–6–.27(6).
			335–14–6–.28(3).
			335–14–8–.02(15)(d)2.
			335–14–8–.02(15)(e)2.
Checklist 88:			
Administrative Stay for K069 Listing	56 FR 19951 ...	5/1/91	335–14–2–.04(3).
Checklist 89:			
Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	56 FR 21955 ...	5/13/91	335–14–2–.04(2)(a).
Checklist 90:			
Mining Waste Exclustion III	56 FR 27330 ...	6/13/91	335–14–2–.01(4)(b)7.
Checklist 91:			
Wood Preserving Listings	56 FR 27332 ...	6/13/91	335–14–2–.04(2). 335–14–5–.23(4)(a)4. 335–14–6–.23(4)(a)4.
Checklist 92:			
Wood Preserving Listings; Technical Corrections	56 FR 30192 ...	7/1/91	335–14–2–.01(4)(a)9.(i). 335–14–2–.01(4)(a)9.(ii). 335–14–2–.04(6)(b). 335–14–2–.04(6)(b)1.(i),(ii),(iii). 335–14–2–.04(6)(b)2,(b)2(i),(I–V). 335–14–2–.04(6)(b)2.(ii)(I–V). 335–14–2–.04(6)(b)2.(ii),(I & II). 335–14–2–.04(6)(b)2.(iii),(I & II),(iv). 335–14–2–.04(5)(6)(b)3(b)3.(i)(I–III). 335–14–2–.04(6)(b)3.(ii). 335–14–2–.04(6)(b)4.(i). 335–14–3–.03(5)(a)(1). 335–14–3–.03(5)(a)2,3,4. 335–14–5–.23(1), (a),(b). 335–14–5–.23(2)(a)(b). 335–14–5–.23(2)(b)3. 335–14–5–.23(2)(c)(d). 335–14–5–.23(3)(4). 335–14–5–.23(4)(b)2.(i)(II). 335–14–5–.23(4)(b)2.(ii). 335–14–5–.23(4)(e)(m)1,3. 335–14–5–.23(5). 335–14–5–.23(6). 335–14–6–.23(1)(a). 335–14–6.23(4)(b)2.(ii),(iii). 335–14–6–.23(4)(m)1,3. 335–14–8–.02(17).

Alabama is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

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

Alabama 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. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 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 Alabama'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 notice 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. 94–1627 Filed 1–31–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

[MB–068–IFC]

RIN 0938–AG63

Medicaid Program; Freedom of Choice Waiver; Conforming Changes

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule amends existing Medicaid regulations on freedom of choice waivers granted under section 1915(b) of the Social Security Act (the Act) to conform them to the amendments made to the Act by sections 4604 and 4742 of the Omnibus Budget Reconciliation Act of 1990. This rule:

- Specifies that the Secretary may not waive the requirement that the State plan provide for adjustments in payment for inpatient hospital services furnished to infants under one year of age, or to children under 6 years of age who receive these services in disproportionate share hospitals.
- Extends to any provider participating under a section 1915(b)(4) waiver the same prompt payment standards that apply to all other health care practitioners furnishing Medicaid services.

This rule also makes technical changes in the regulations relating to a recipient's free choice of providers of family planning services and cost-sharing requirements under waivers.

DATES: Effective Date: This interim final rule is effective on March 3, 1994. Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 4, 1994.

ADDRESSES: Mail comments (original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–068–IFC, P.O. Box 7518, Baltimore, MD 21207–0518

If you prefer, you may deliver your written comments (original and three copies) to one of the following addresses:

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

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD, 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file MB–068–IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Carole Benner, (410) 966–4464

SUPPLEMENTARY INFORMATION:

I. Background

Title XIX of the Social Security Act (the Act) provides authority for the States to operate Medicaid programs to provide medical assistance to needy individuals. States with Medicaid programs must meet State plan requirements specified in section 1902 of the Act to qualify for Federal financial participation (FFP). The costs of both administration and health care services furnished under approved State Medicaid plans qualify for FFP.

Under section 1915(b) of the Act, a State may request the Secretary to waive certain State plan requirements of section 1902 of the Act, if the Secretary finds such waivers to be cost effective, efficient, and consistent with Medicaid program objectives. The waivers permit a State, under its Medicaid program, to restrict a recipient's free choice of provider by:

- Implementing a case management system or a specialty physician services arrangement that restricts the provider from or through whom the recipients can obtain primary care services (other than emergency services), so long as the restriction does not substantially impair access to services of adequate quality;
- Allowing a locality to act as a central broker in assisting beneficiaries in selecting among competing health care plans;
- Sharing with recipients any cost savings (through provision of additional health services) resulting from the use by a recipient of more cost effective medical care service arrangements; and
- Restricting the provider from or through whom the recipient can receive

services (other than emergency services) to providers or practitioners who comply with State plan payment, quality, efficiency, and utilization standards so long as this restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services. (This provision has been expanded to provide for timely payment to providers, as explained later in this preamble.)

No section 1915(b) waiver may restrict the choice of a recipient in receiving family planning services.

Congress has prohibited the Secretary from granting, under section 1915(b), waivers of certain State plan requirements through amendments made by sections 4604 and 4742 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508. Section 4604(c) of OBRA '90 amended section 1915(b) of the Act to prohibit waiver of the requirement that the State plan provide for adjustments in payment for inpatient hospital services furnished to infants who have not attained one year of age or to children who have not attained 6 years of age and who receive these services in disproportionate share hospitals. Section 4742(a) of OBRA '90 amended section 1915(b)(4) of the Act to specify that the same prompt payment requirements that apply to health care practitioners under Medicaid under section 1902(a)(37)(A) must be extended to any type of provider who participates in the Medicaid program under a section 1915(b)(4) freedom of choice waiver.

II. Discussion of Legislative Changes and Provisions of Regulations

A. Medicaid Payments for Services Provided in Disproportionate Share Hospitals

Section 4604 (a) and (b) of OBRA '90 amended section 1902 of the Act by adding sections 1902(a)(55) and 1902(s). Section 1902(a)(55) specifies that a State Medicaid plan must provide, in accordance with section 1902(s), for adjustments in payments for certain inpatient hospital services. Section 1902(s) specifies that a State plan must provide that payments to hospitals for inpatient hospital services furnished to infants who have not attained age one and to children who have not attained age six and who receive these services in disproportionate share hospitals must provide outlier adjustments for inpatient hospital services involving exceptionally high costs, or exceptionally long lengths of stay, if payment is made on a prospective basis (whether per diem, per case, or otherwise). Also, section 1902(s) provides that these payments must not be limited by (1) the imposition of day limits with respect to delivery of these services to the specified individuals; and (2) the imposition of dollar limits (other than limits resulting from the outlier adjustments specified above) with respect to the delivery of these services to infants who have not attained their first birthday (or in the case of an infant who is an inpatient on his first birthday, until the infant is discharged).

Section 4604(c) of OBRA '90 amended section 1915(b) of the Act to specifically prohibit any waiver of the section 1902(s) requirements. Section 4604 became effective with respect to payments for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date. However, if a State requires State legislation to meet the requirements, the State will not be held out of compliance with the requirement before the first day of the calendar quarter beginning after the close of the first regular session of the State legislature that begins after November 5, 1990.

This interim final rule amends § 431.55 of the Medicaid regulations by adding a new paragraph (b)(5) that prohibits the waiver of the section 1902(s) requirements of the Act under section 1915(b) waivers.

B. Timely Payment of Claims to Health Care Providers

Under section 1902(a)(37) of the Act, as interpreted under § 447.45 of the Medicaid regulations, a State's Medicaid plan must require the following prompt payment standards with regard to the payment of Medicaid claims made by health care practitioners in individual or group practice, or in shared health facilities:

- Claims can be submitted no later than 12 months from the date of service.
- The agency must pay 90 percent of all clean claims within 30 days of the receipt of the claim unless a waiver is granted for good faith effort to comply.
- The agency must pay 99 percent of all clean claims within 90 days of receipt of the claim unless a waiver is granted for good faith effort to comply.
- The agency must pay all other claims within 12 months of receipt of the claim. This limitation does not apply to retroactive adjustments to providers who are paid under a retrospective payment system; to claims filed timely under Medicare; to claims of providers under investigation for fraud or abuse; or to claims for which this limitation is superseded by a court order, a hearing decision, or other corrective action.

Section 447.45 also requires that the State plan contain a definition of a claim to be used in meeting the requirements of timely claims payments; specifies the conditions for approving waiver requests; and requires that the State agency provide compliance reports and documentation.

Section 1902(a)(37) of the Act and § 447.45 do not apply to claims from hospitals and other institutions.

Section 4742(a) of OBRA '90 amended section 1915(b)(4) of the Act to require timely payment of claims for services provided under the freedom of choice waivers. This provision specifies that each State must meet the same prompt payment standards for providers under a section 1915(b)(4) waiver that are currently required for payment of other health care practitioners who furnish services under Medicaid, as provided for in section 1902(a)(37)(A) of the Act. Section 4742(a) of OBRA '90 became effective on January 1, 1991.

This interim final rule amends § 431.55 of the Medicaid regulations by adding a new paragraph (f)(4) that requires States to make timely payments to any provider who participates in a Medicaid program under a section 1915(b)(4) waiver in the same manner that is required for payment to other health care practitioners furnishing Medicaid services, as specified in § 447.45.

III. Technical Changes

A. Freedom of Choice of Providers of Family Planning Services

Section 1902(a)(23) of the Act provides that Medicaid recipients may obtain services from any qualified provider that undertakes to provide services to them. Under section 1915(b) of the Act, a State may request that the Secretary waive the freedom of choice of provider requirement of section 1902(a)(23) in certain specified circumstances, but the law prohibits any restriction on a recipient's choice of a provider of family planning services.

One of the circumstances for waiving the section 1902(a)(23) freedom of choice requirement is to allow the State to implement primary care case management systems (PCCMs) or specialty physician services arrangements, under which the State may restrict the provider through whom a recipient can receive medical care services. Under a PCCM, the State must assure that a specific person or agency

will be responsible for locating, coordinating, and monitoring all primary and other medical services on behalf of recipients involved in the program. A specialty services arrangement allows the State to restrict recipients of specialty services to designated providers even in the absence of a PCCM, for example, restricting recipients in need of maternity related services to specific clinics. Emergency services and family planning services may not be restricted under these waivers, nor may the waiver substantially impair a recipient's access to services of adequate quality.

Section 431.51(b)(1) of the existing regulations specifies that a recipient has a freedom of choice of providers, with certain allowed exceptions (one of which is under a section 1915(b) waiver). Section 431.51(b)(2) of the existing regulations specifically states that a State plan must provide that a recipient enrolled in a primary care case management system, an HMO, or other similar entity will not be restricted in freedom of choice of providers of family planning services. However, the existing regulations at § 431.55(b) that set forth the general requirements for waivers under section 1915(b), including waivers relating to implementing case management systems (§ 431.55(c)), do not specifically reference the prohibited restriction of a recipient's freedom of choice of providers of family planning services. We believe this reference oversight may result in some misunderstanding if § 431.55 is read alone and not in the context of the complete subpart which contains both §§ 431.51 and 431.55. Therefore we are revising § 431.55(b) by adding a new paragraph (b)(2)(iv) to clarify that the prohibition against limiting a recipient's freedom of choice of family planning services applies to all section 1915(b) waivers (including waivers relating to case management systems).

B. Waiver of Cost-Sharing Requirements

For organizational purposes, we are separating the provisions on waiver of cost-sharing requirements that appear under the existing paragraph (g) of § 431.55 from other requirements and establishing them as a new § 431.57, with some minor editorial changes. We have made conforming changes in paragraph (a) of § 431.55 to reflect this transfer.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking for a regulation in the **Federal Register** to provide a period for public comment.

Section 4207(j) of OBRA '90 permits the Secretary to issue interim final regulations in order to implement the provisions of that Act. Therefore, we are dispensing with prior notice and comment rulemaking in this case and promulgating this rule on an interim final basis. However, we are providing a 60-day period for public comments on the interim final rule as indicated at the beginning of this preamble.

V. Response to Comments

Because of the large volume of correspondence we normally receive on an interim final rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and if we proceed with the final rule, we will respond to the comments in the final rule.

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States are not considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any interim final rule that may have a significant effect on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this interim final rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VII. Collection of Information Requirements

This final rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR part 431 is amended as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. In § 431.55, paragraph (a) is revised, paragraph (b)(2) is revised, a new paragraph (b)(5) is added, a new paragraph (f)(4) is added, and paragraph (g) is removed to read as follows:

§ 431.55 Waiver of other Medicaid requirements.

(a) *Statutory basis.* Section 1915(b) of the Act authorizes the Secretary to waive most requirements of section 1902 of the Act to the extent he or she finds proposed improvements or specified practices in the provision of services under Medicaid to be cost effective, efficient, and consistent with the objectives of the Medicaid program. Sections 1915 (f) and (h) prescribe how such waivers are to be approved, continued, monitored, and terminated.

(b) *General requirements.*

* * * * *

(2) In applying for a waiver to implement an approvable project under paragraph (c), (d), (e), or (f) of this section, a Medicaid agency must document in the waiver request and maintain data regarding:

(i) The cost-effectiveness of the project;

(ii) The effect of the project on the accessibility and quality of services;

(iii) The anticipated impact of the project on the State's Medicaid program and;

(iv) Assurances that the restrictions on free choice of providers do not apply to family planning services.

* * * * *

(5) The requirements of section 1902(s) of the Act, with regard to adjustments in payments for inpatient hospital services furnished to infants who have not attained age 1 and to children who have not attained age 6 and who receive these services in disproportionate share hospitals, may not be waived under a section 1915(b) waiver.

* * * * *

(f) *Restriction of freedom of choice.*

* * * * *

(4) The agency must make payments to providers furnishing services under a

freedom of choice waiver under this paragraph (f) in accordance with the timely claims payment standards specified in § 447.45 of this chapter for health care practitioners participating in the Medicaid program.

3. A new § 431.57 is added to read as follows:

§ 431.57 Waiver of cost-sharing requirements.

(a) Sections 1916(a)(3) and 1916(b)(3) of the Act specify the circumstances under which the Secretary is authorized to waive the requirement that cost-sharing amounts be nominal.

(b) For nonemergency services furnished in a hospital emergency room, the Secretary may by waiver permit a State to impose a copayment of up to double the "nominal" copayment amounts determined under § 447.54(a)(3) of this subchapter.

(c) Nonemergency services are services that do not meet the definition of emergency services at § 447.53(b)(4) of this subchapter.

(d) In order for a waiver to be approved under this section, the State must establish to the satisfaction of HCFA that alternative sources of nonemergency, outpatient services are available and accessible to recipients.

(e) Although, in accordance with § 431.55(b)(3) of this part, a waiver will generally be granted for a 2-year duration, HCFA will reevaluate waivers approved under this section if the State increases the nominal copayment amounts in effect when the waiver was approved.

(f) A waiver approved under this section cannot apply to services furnished before the waiver was granted.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 5, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 2, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–2115 Filed 1–31–94; 8:45 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 59, No. 21
Tuesday, February 1, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 316

RIN 3206–AF55

Temporary and Excepted Service Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing use of temporary appointments (i.e., appointments limited to 1 year or less) to set a uniform service limit for such appointments in both the competitive and the excepted service at 1 year with no more than one 1-year extension.

DATES: Comments must be received on before April 4, 1994.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606–0960, or fax (202) 606–2329.

SUPPLEMENTARY INFORMATION: These proposed regulations deal only with the time limits applicable to nonpermanent appointments. The proposed changes would establish safeguards in regulation to ensure that temporary appointments, under which employees receive no benefits, are used to meet truly short-term hiring needs. The 2-year service limit parallels the limit for such appointments recommended by the National Performance Review.

The report of the National Performance Review also recommended comprehensive restructuring of the total appointment system. The National Partnership Council is developing legislation consistent with the National Performance Review's recommendations for creation of a more flexible and responsive hiring system. However, implementation of a new system will require additional time. In the meantime, changes to the current system are needed to address concerns about inappropriate use of temporary appointments.

To fill jobs that are likely to be affected by base closings, realignment, automation and streamlining of work processes, or similar situations, OPM has authorized use of temporary appointments whenever continued funding, ceiling, or workload levels are uncertain. Agencies may extend those appointments, in 1-year increments, up to a total of 4 years. However, the 4-year maximum service limit has blurred the distinction between temporary and continuing employment and has created some new concerns.

Since the current 4-year limit applies to the position rather than to the appointee, some employees serve in several different temporary positions, thereby accumulating many years of temporary service. Those employees have expressed concern that they are denied within-grade pay increases, fringe benefits, and job security afforded to permanent employees in similar jobs. We believe that the compensation-related concerns are often justified.

To respond to legitimate concerns, OPM proposes to establish the new time limits for temporary appointments. The proposed changes would restrict an agency's ability to use successive temporary appointments to meet the same employment need. They would not, however, restrict an individual's eligibility to apply for successive temporary appointments to different jobs or agencies.

Competitive Service

Temporary appointments in the competitive service would be limited to a maximum of 1 year, with no more than one 1-year extension at the agency's discretion. Additional extensions would be permitted, with prior OPM approval, only when necessary during base closings, major reorganizations, or in other rare and unusual circumstances. When an organization has more than one position involving the same basic duties in the same local commuting area, an appointment to any of those positions would be considered as an extension of the original appointment. Similarly, an appointment to a successor position (i.e., one that replaced and absorbed the work of the original position) would be defined as an extension, regardless of any change in grade, organizational location, etc.

Agencies would be prohibited from making a new temporary appointment to a position (or its successor) if that position had previously been filled by temporary appointment(s) for an aggregate of 2 years within the preceding 3-year period. Each temporary appointment would require supervisory certification that the employment need it truly temporary with the reasons specified and that the appointment meets the regulatory time limits.

The proposed time limits would not apply to positions involving less than 6 months of intermittent or seasonal work each year. "Work" for this purpose means time in pay status, not calendar time. Generally, employees who work less than 6 months a year receive no benefits. Agencies' needs for such supplemental staff may fluctuate from year to year. Consequently, the proposed regulations would permit agencies to hire intermittent or seasonal workers on temporary appointments, with no limit on the number of extensions or noncompetitive reappointments, as long as the employees were paid for less than 1,040 hours each year.

To facilitate transition to the revised appointment limits, OPM would authorize a one-time use of term appointments outside the register to permit agencies to convert competitive service temporary employees in positions that no longer meet the time limits for temporary appointment, but that are appropriate for filling under term appointments. The proposed regulations would also permit noncompetitive conversion from temporary to term appointment whenever OPM or an agency maintains a register and an employee comes within reach for permanent appointment from that register while serving in the position under temporary appointment. (Such authority already exists for conversion to permanent appointments.)

Excepted Service

Time limits for temporary appointments (i.e., appointments with time limits of 1 year or less) in the excepted service would generally be the same as in the competitive service.

However, the 2-year service limit would not apply to appointments in internship, fellowship, residency, or student programs established primarily to qualify the employees for a professional occupation, or to further their education. Student and Stay-in-School appointments under 5 CFR 213.3102(P), (q), (v), (w), and (jj), or successor authorities, and comparable single-agency authorities could continue to be made and extended as currently provided in those authorities. (OPM plans to propose regulations to revise and consolidate the student appointing authorities in 5 CFR part 213). In addition, the restriction on refilling positions by temporary appointment would not apply to appointments under those programs or under programs established to provide for systematic exchange between a Federal agency and nonfederal organizations.

The proposed regulations in 5 CFR part 213 also include editorial changes to clarify the relationship of employment conditions to edibility requirements and to eliminate obsolete references to delegation agreements covering authority to establish Schedule C exceptions. No such agreements have existed since 1981, and OPM does not expect to establish such agreements in the future.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects

5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 213 and 316 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 213.101 also issued under 5 U.S.C. 2103; section 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8457; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185.

2. Section 213.102 is revised to read as follows:

§ 213.102 Identification of positions in Schedule A, B, or C.

(a) The Office of Personnel Management will decide whether the duties and requirements of any particular position justify exception from the competitive service. Upon favorable determination, OPM will authorize the position to be filled by excepted appointment under Schedule A, B, or C. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, or C appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (i.e., full-time, part-time, seasonal, on-call, or intermittent).

(b) When OPM establishes eligibility requirements (e.g., residence, family income) for appointment under particular Schedule A or B exceptions, an individual's eligibility for appointment must be determined before appointment and without regard to any conditions that will result from the appointment.

3. A new section 213.104 is added to read as follows:

§ 213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

(a) When OPM specifies that appointments under a particular Schedule A, B, or C authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, or C, those terms have the following meanings:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, or C exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section.

(2) *Intermittent positions* are positions in which work recurs at sporadic or irregular intervals so that an employee's tour of duty cannot be scheduled in advance of the administrative workweek.

(3) *Seasonal positions* involve annually recurring periods of employment lasting less than 12 months each year.

(b) Temporary appointments, as defined in paragraph (a)(1) of this section, are subject to the following limits:

(1) *Service limits.* Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, or C authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year. Appointment to a successor position (i.e., a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

(2) *Restrictions on refilling positions under temporary appointments.* Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A, B, or C if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and nonfederal organizations.

(3) *Exceptions to the general limits.* The service limits and restrictions on refilling positions set out in this section do not apply when:

(i) Positions involve intermittent or seasonal work, and employment in the same or a successor position under one or more appointing authorities totals less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee's initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the general limits set out in this section will apply to subsequent extension or reappointment.

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. Such authorities include those set out in paragraphs (p), (q), (v), (w), and (jj) of § 213.3102 and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

(iii) OPM approves extension of specific temporary appointments beyond 2 years when necessitated by major reorganizations or base closings or

other rare and unusual circumstances. Requests for such extensions must be made by an official at the headquarters level of the Department or agency.

PART 316—TEMPORARY AND TERM EMPLOYMENT

4. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); section 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; section 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

5. In section 316.302, paragraph (c)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(c) * * *

(3) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, 315.606, 315.608, 315.609, or 315.703 of this chapter;

* * * * *

6. Section 316.401 is revised to read as follows:

§ 316.401 Purpose and duration.

(a) *Appropriate use.* An agency may make a temporary limited appointment—

(1) To fill a short-term position (i.e., one that is not expected to last longer than 1 year);

(2) To meet an employment need that is scheduled to be terminated within the timeframe set out in paragraph (b) of this section for such reasons as abolishment, reorganization, or contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload; or

(3) To fill positions on a temporary basis when the positions are expected to be needed for placement or permanent employees who would otherwise be displaced from other parts of the organization.

(b) *Certification of appropriate use.* The supervisor of each position filled by temporary appointment must certify that the employment need is truly temporary and that the proposed appointment meets the regulatory time limits. The reason(s) for making a temporary limited appointment must be stated on the form documenting each such appointment.

(c) *Time limits—general.* (1) An agency may make a temporary appointment for a specified period not to exceed 1 year. The appointment may be extended up to a maximum of 1 additional year. Appointment to a successor position (i.e., to a position that replaces and absorbs the position to which an individual was originally appointed) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties and in the same major subdivision of the agency and same local commuting area as the original appointment is also considered to be an extension of the original appointment.

(2) An agency may not fill a position by temporary appointment if that position has previously been filled by temporary appointment(s) for an aggregate of 2 years within the preceding 3-year period.

(d) *Exceptions to general time limits.* (1) Agencies may make and extend temporary appointments to positions involving intermittent or seasonal work without regard to the limits in paragraph (b) of this section, provided that:

(i) Appointments and extensions are made in increments of 1 year or less.

(ii) Employment in the same or a successor position under this and any other appointing authority totals less than 6 months (1,040 hours), excluding overtime, in a service year. Should employment in a position filled under this exception total 6 months or more in any service year, the provisions of paragraph (b) of this section will apply to subsequent extension or reappointment.

(2) OPM will authorize exceptions to the limits set out in paragraph (b) of this section only when necessitated by major reorganizations or base closings or other unusual circumstances. Requests for such exceptions must be submitted by an official at the headquarters level of the Department or agency.

6. In § 316.402, the heading and paragraphs (a) and (b)(3) are revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) *General rule.* Except as provided in paragraph (b) of this section, or as specifically authorized by OPM, temporary limited appointments are made by selection from a register. OPM may authorize an agency to make temporary appointments outside a register, in accordance with the procedures set out in 5 CFR part 333, upon determining that registers covering the positions do not exist or are likely to be inadequate or inappropriate to meet the agency's hiring needs. When authority to make temporary appointments outside a register will apply to more than one agency, OPM will provide the conditions for use of the authority in future guidance to agencies.

(b) * * *

(3) A former temporary employee of the agency who was originally appointed from a register or under the provisions of Part 333 of this chapter and whose service meets the time limits for reappointment set out in § 316.401.

* * * * *

[FR Doc. 94–1651 Filed 1–31–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1726

Permitted Contract Modifications—Indemnification

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulations by adding a new subpart. This subpart will allow borrowers to alter REA's standard forms of electric construction contracts by inserting an alternative provision relating to indemnification of the owner (borrower) by the contractor. Some borrowers have requested approval to incorporate an alternative indemnification clause in certain contracts that they feel provides them protection in addition to that afforded by the existing clause. When this proposed rule is finalized, borrowers may use the alternative indemnification provision contained in this provision.

DATES: Written comments must be received by REA, or bear a postmark or equivalent, no later than April 4, 1994.

ADDRESSES: Submit written comments to Archie W. Cain, Director, Electric Staff Division, Rural Electrification Administration, Room 1246-S, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requires a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be made available for public inspection at room 2234 South Building between 8:30 a.m. and 5 p.m. on official work days (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500. Telephone (202) 720–1398.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act.

Information Collection and Recordkeeping Requirements

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

National Environmental Policy Act Certification

The Administrator of REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

This program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance under Number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone (202) 720–3238.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans and loan guarantees from coverage under this order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; or

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Background

REA requires as a tenet of its loan agreement with borrowers that borrowers use standard contract forms for certain construction, material supply, equipment supply, architectural services, and engineering services contracts. The construction contract forms contain a standard indemnification (also called "hold harmless") clause pursuant to which the contractor agrees to indemnify the owner against certain risks. Some borrowers have requested approval to incorporate an alternative indemnification clause in certain contracts that they feel provides them protection in addition to that afforded by the existing clause. Some contractors have expressed concern about the extent of their potential liability under such a modified indemnification provision, particularly for certain actions of the owner. REA has determined that it is in the Government's and the borrowers' best interest to have a reasonable and balanced indemnification provision: one that provides adequate protection for the borrower while not placing an unreasonable business risk on the contractor. An indemnification provision that does not adequately protect the borrower could expose the borrower to liability for damages which could endanger the Government's loan security. An indemnification provision which places an unreasonable business risk on the contractor could result in qualified, capable contractors declining to bid under such conditions, which could result in reduced competition and higher costs. It could even result in the borrower being exposed to increased liability if only financially weak contractors bid, since the contractor may be financially unable to meet its indemnification obligations. REA has also determined that reasonable uniformity in the borrowers' contract language is necessary for the orderly administration of the program and gives REA, the borrowers, and the contractors comfort that past experience with the contract language will continue in the future. Therefore, it is appropriate to publish an alternative indemnification clause which borrowers may use in lieu of the standard indemnification clause currently required in REA contract forms.

REA recognizes that indemnification and insurance are related issues. REA considered certain additional contractor insurance requirements, such as requiring the borrower and/or the engineer to be named as additional insured and requiring "contractual liability" insurance, but has decided to make no changes in the contractor insurance requirements at this time. However, comments are invited on this related issue.

Several engineering firms have expressed a desire to include the engineer within the scope of the borrower's indemnification clause because of the nature of the relationship between the borrower and the engineer. Since the engineer is an entity independent of the borrower and has no direct contractual relationship with the contractor, REA has determined that a clear separation should be maintained between the engineer and the contractor. Therefore, the proposed indemnification clause does not extend to the engineer. However, comments are invited on this issue.

List of Subjects in 7 CFR Part 1726

Electric power, Loan programs—energy, Rural areas.

For reasons set forth in the preamble, REA proposes to amend 7 CFR part 1726 as follows:

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

2. Subpart H of part 1726 is added to read as follows:

Subpart H—Modifications to REA Standard Contract Forms

Sec.
1726.250—1726.255 [Reserved]
1726.256 Permitted contract modifications—indemnification.

Subpart H—Modifications to REA Standard Contract Forms

§§ 1726.250—1726.255 [Reserved]

§ 1726.256 Permitted contract modifications—indemnification.

(a) As an alternative to the indemnification provision required in REA standard construction contract forms, the borrower may insert the following:

"i. To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or

connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

ii. To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

iii. Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company."

(b) If the alternative in paragraph (a) of this section is chosen by the borrower, the language of paragraph (a) of this section would be inserted in lieu of the last sentence of the section indicated in the following REA standard construction contract forms:

Form No.	Title	Designated Section
200	Construction Contract—Generating.	Article IV, Section 1 (c)
201	Right-of-Way Clearing Contract.	Article IV, Section 1 (e)
203	Transmission System Right-of-Way Clearing Contract.	Article IV, Section 1 (f)
257	Contract to Construct Buildings.	Article IV, Section 1 (b)
764	Substation and Switching Station Erection Contract.	Article IV, Section 1 (f)
786	Electric System Communications and Control Equipment Contract.	Article IV, Section 1 (c)
790	Distribution Line Extension Construction Contract (labor & materials).	Article IV, Section 1 (f)
792	Distribution Line Extension Construction Contract (labor only).	Article IV, Section 1 (f)
830	Electric System Construction Contract (labor & material).	Article IV, Section 1 (f)
831	Electric Transmission Construction Contract (labor & material).	Article IV, Section 1 (f)

(c) In Forms 201, 790, and 792, the word "Contractor" would replace the word "Bidder" in the alternative indemnification clause in paragraph (a) of this section.

(d) In Form 786, the word "Seller" would replace the word "Bidder" and the word "Purchaser" would replace the word "Owner" in the alternative indemnification clause in paragraph (a) of this section.

(e) Nothing in this section modifies existing requirements relating to REA approval of contracts.

Dated: January 25, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 94–2044 Filed 1–31–94; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–60–AD]

Airworthiness Directives: Piper Aircraft Corporation PA24, PA30, and PA39 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 74–13–01, which currently requires inspecting (one-time) the stabilator torque tube bearing support fittings for looseness on certain Piper Aircraft Corporation (Piper) PA24, PA30, and PA39 series airplanes, and, if looseness is found, incorporating Piper Kit No. 760 835 (Hi-Shear Rivet Replacement). The proposed action would retain the initial inspection of the stabilator torque tube bearing support fittings, and would make these inspections repetitive unless the above referenced service kit is incorporated on all four stabilator torque tube bearing support fittings. Incidents of looseness of the stabilator torque tube bearing support fittings on several of the affected airplanes in compliance with the current AD prompted this action. The actions specified by the proposed AD are intended to prevent loss of pitch control because of looseness of the stabilator torque tube bearing support fittings, which could result in loss of control of the airplane.

DATES: Comments must be received on or before April 8, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–60–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

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 that summarizes 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 No. 93–CE–60–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–60–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 74–13–01, Amendment 39–1870, currently requires inspecting (one-time) the stabilator torque tube bearing support fittings for looseness on Piper PA24, PA30, and PA39 series airplanes, and, if looseness is found, incorporating Piper Kit No. 760 835 (Hi-Shear Rivet Replacement).

The FAA has received reports of incidents where looseness of the stabilator torque tube bearing support fittings was discovered on several Piper PA24, PA30, and PA39 airplanes. All of these airplanes were in compliance with the one-time inspection requirement of AD 74–13–01, but did not have Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) incorporated on all four stabilator torque tube bearing support fittings.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) The one-time inspection of the stabilator torque tube bearing support fittings on the referenced airplanes that is currently required by AD 74–13–01 should be accomplished repetitively unless Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) is incorporated on all four stabilator torque tube bearing support fittings; and (2) AD action should be taken to prevent loss of pitch control because of looseness of the stabilator torque tube bearing support fittings, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA24, PA30, and PA39 series airplanes of the same type design that have not incorporated Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) on all four stabilator torque tube bearing support fittings, the proposed AD would supersede AD 74–13–01 with a new AD that would retain the initial inspection of the stabilator torque tube bearing support fittings, and would make these inspections repetitive unless the above referenced service kit is incorporated on all four stabilator torque tube bearing support fittings.

The FAA estimates that 4,409 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $242,495. This figure does not account for any repetitive inspections that would be required by the proposed AD. However, incorporating Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) on all four stabilator torque tube bearing support fittings eliminates the need for the repetitive inspection requirement of this AD. In addition, this kit may have been incorporated through compliance with AD 75–27–08, Amendment 39–2624. This AD requires inspecting the rivets of the stabilator torque tube bearing support fittings, and the modification for any misaligned rivets is the incorporation of the referenced kit. The cost figure presented above is based on the assumption that none of the owners/operators that would be affected by the proposed AD have incorporated Piper Kit No. 760 835. The FAA anticipates that numerous owners/operators have incorporated this kit, thereby reducing the cost impact of the proposed action.

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 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) 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 has been placed 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 removing AD 74–13–01, Amendment 39–1870, and by adding the following new airworthiness directive to read as follows:

Piper Aircraft Corporation: Docket No. 93–CE–60–AD; Supersedes AD 74–13–01, Amendment 39–1870.

Applicability: The following model and serial number airplanes, certificated in any category, that have not incorporated Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) on all four stabilator torque tube bearing support fittings:

Model	Serial Nos.
PA24–180, PA24–250 and PA24–260.	24–1 through 24–5047.
PA24–400 ..	26–2 through 26–148.
PA30	30–1 through 30–2000.
PA39	39–1 through 39–155.

Note 1: Piper Kit No. 760 835 (Hi-Shear Rivet Replacement), may have been incorporated through compliance with AD 75–27–08, Amendment 39–2624. This AD requires inspecting the rivets of the stabilator torque tube bearing support fittings, and the modification for any misaligned rivets is the incorporation of the referenced kit. Airplanes incorporating this kit on all four stabilator torque tube bearing support fittings are not affected by this AD.

Compliance: Required within the next 100 hour time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated.

To prevent loss of pitch control because of looseness of the stabilator torque tube bearing support fittings, which could result in loss of

control of the airplane, accomplish the following:

(a) Inspect the stabilator torque tube bearing support fittings for looseness by accomplishing the following:

(1) Remove the tail cone and right rear aft fuselage access door.

(2) Grasp the stabilator tip and shake the tip from left to right and up and down.

Note 2: Piper Service Bulletin 411A, dated April 10, 1974, specifies these same procedures for inspecting the stabilator torque tube bearing support fittings.

(b) If looseness is found during the inspection specified in paragraph (a) of this AD, prior to further flight, incorporate Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) on the affected fitting, and reinstall the tail cone and right rear aft fuselage access door.

(c) If looseness is not found during the inspection specified in paragraph (a) of this AD, prior to further flight, reinstall the tail cone and right rear aft fuselage access door, and reinspect the stabilator torque tube bearing support fittings for looseness at intervals not to exceed 100 hours TIS until Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) is incorporated on all four stabilator torque tube bearing support fittings.

(d) Incorporating Piper Kit No. 760 835 (Hi-Shear Rivet Replacement) on all four stabilator torque tube bearing support fittings is considered terminating action for the inspection requirement of this AD.

(e) 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.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 74-13-01, Amendment 39-1870.

Issued in Kansas City, Missouri, on January 24, 1994.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-2090 Filed 1-31-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-196-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 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 certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of certain main landing gear (MLG) torque link dampers. This proposal is prompted by a report that certain MLG torque link dampers may have been assembled with incorrect parts. The actions specified by the proposed AD are intended to prevent loss of the damping characteristics of the torque link damper, which could lead to the loss of the MLG wheel assembly of the aircraft during takeoff or landing.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-196-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.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; 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-196-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-196-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that certain main landing gear (MLG) torque link dampers may have been assembled with an incorrect part. Investigation into this problem has identified the affected dampers: one batch of 32 MLG torque link dampers, Menasco part number 23700-1, having serial numbers MAL417 through MAL427 inclusive, and MAL429 through MAL449 inclusive. This condition, if not corrected, could result in loss of damping characteristics of the torque link damper, which could lead to the loss of the MLG wheel assembly of the aircraft during takeoff and landing.

Fokker has issued Service Bulletin SBF100-32-077, dated July 6, 1993, that describes procedures for a one-time inspection and replacement of suspect MLG torque link dampers with serviceable dampers. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive (BLA) 93-095 (A), dated July 16, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and 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 replacement of suspect MLG torque link dampers with serviceable dampers. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $900 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,840, or $1,120 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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:

Fokker: Docket 93–NM–196–AD.

Applicability: Model F28 Mark 0100 series airplanes, certificated in any category; equipped with Menasco main landing gear (MLG) torque link dampers, part number 23700–1, having serial numbers MAL417 through MAL427 inclusive, and MAL429 through MAL449 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of damping characteristics of the torque link damper, which could lead to the loss of the MLG wheel assembly of the aircraft during takeoff or landing, accomplish the following:

(a) Within 14 days after the effective date of this AD, replace Menasco MLG torque link dampers, part number 23700–1, with a serviceable damper.

(b) As of the effective date of this AD, no person shall install a Menasco MLG torque link damper, part number 23700–1, having serial numbers MAL417 through MAL427, inclusive, or MAL429 through MAL449, inclusive, on any airplane.

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

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

Issued in Renton, Washington, on January 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2181 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ACE–03]

Proposed Revision of Class D Airspace; Kansas City, MO, Richards-Gebaur Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class D airspace at Kansas City, Richards-Gebaur Airport, Missouri, by excluding the Hillside Airport at Stilwell, Kansas, from controlled airspace. On September 16, 1993, Airspace Reclassification discontinued the use of the term "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this proposal is to provide access to the Hillside Airport without the requirement to establish radio contact with the Richards-Gebaur Airport Traffic Control Tower (ATCT).

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 93–ACE–03, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri, 64106; telephone number: (816) 426–3408.

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 under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ACE–03." 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 601 East 12th Street, Kansas City, Missouri, 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, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. 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 procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class D airspace at the Kansas City Richards-Gebaur Airport. On September 16, 1993, Airspace Reclassification discontinued the use of the term "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower in now Class D airspace. During the Airspace Reclassification project, the Hillside Airport at Stilwell, KS was to be excluded from the Richards-Gebaur Class D airspace. However, it inadvertently was not addressed in the official description. Under the rules prior to Airspace Reclassification, an aircraft could land and take off at this airport without contacting the Richards-Gebaur ATCT. Under the present rules, an aircraft operating to/from the Hillside Airport must contact the ATCT. The intended effect of this proposal is to provide access for aircraft utilizing the Hillside Airport without the requirement to establish radio contact with the Richards-Gebaur ATCT. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document would 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 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, when promulgated, will not have a significant 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, Navigation (air).

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 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 Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE MO D Kansas City, MO [Revised]

Richards-Gebaur Airport, MO
(Lat. 38°50'38" N, long. 94°33'37" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Richards-Gebaur Airport; excluding that airspace from the surface to 1,700 feet MSL bounded on the north by lat. 38°50'00" N. and on the east by long. 94°36'00" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on January 7, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–2205 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–04]

Proposed Establishment of Class E Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace extending from 700 feet above ground level (AGL) at Ankeny, Iowa. The development of a new standard instrument approach procedure (SIAP) at Ankeny Regional Airport, Ankeny, Iowa, utilizing a new non-directional beacon (NDB) on the airport as a navigational aid, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP at Ankeny, Iowa.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 93–ACE–04, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief

Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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: Kathy J. Randolph, Airspace Technician, System Management Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

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 under the caption ADDRESSES. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ACE–04." 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 601 East 12th Street, Kansas City, Missouri, 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, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. 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 procedure.

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 Ankeny, Iowa, extending upward from 700 feet above the surface excluding that portion within the Des Moines, Iowa, Class C and E airspace areas. The development of a new SIAP at Ankeny Regional Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB SIAP at Ankeny Regional Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth when designated in conjunction with an airport 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 would 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 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, when promulgated, will not have a significant 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, Navigation (air).

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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ankeny, IA [New]

Ankeny Regional Airport, IA
(lat. 41°41'28" N, long. 93°34'40" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ankeny Regional Airport, Iowa, excluding that portion within the Des Moines, Iowa, Class C and E airspaces.

* * * * *

Issued in Kansas City, Missouri, on January 7, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–2206 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–05]

Proposed Establishment of Class E Airspace; Harrisonville, MO, Lawrence Smith Memorial Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Lawrence Smith Memorial Airport, Harrisonville, Missouri. The development of a standard instrument approach procedure (SIAP) at the Lawrence Smith Memorial Airport, Harrisonville, Missouri, utilizing the Butler, Missouri, Very High Frequency Omnidirectional Radio Range/Tactical Air Navigational Aid (VORTAC) has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP's at Harrisonville, Missouri.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager,

System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 93–ACE–05, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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: Dale L. Carine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

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 under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ACE–05." 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 601 East 12th Street, Kansas City, Missouri, 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, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri, 64106. 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 procedure.

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 Lawrence Smith Memorial Airport, Harrisonville, Missouri, extending upward from 700 feet above ground level (AGL) to 1200 feet AGL. The development of a new SIAP based on the Butler, Missouri, VORTAC made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR SIAP at Lawrence Smith Memorial Airport, Harrisonville, Missouri. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet AGL or more, when designated in conjunction with an airport, 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 would 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 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, 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, Navigation (air).

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 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 Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ACE MO E5 Harrisonville, MO [New]

Lawrence Smith Memorial Airport, MO
(lat. 38°36'20"N, long. 94°20'46"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Lawrence Smith Memorial Airport.

* * * * *

Issued in Kansas City, Missouri, on January 7, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division.

[FR Doc. 94–2207 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–06]

Proposed Establishment of Class E Airspace; Sullivan, MO, Sullivan Regional Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Sullivan, Missouri, extending from 700 feet above ground level (AGL) to 1200 feet AGL. The development of a new standard instrument approach procedure (SIAP) at Sullivan Regional Airport, Sullivan, Missouri, utilizing a new nondirectional beacon (NBD) on the airport as a navigational aid, has made the proposal necessary. The intended effect of this proposal is to provide controlled

airspace for aircraft executing the SIAP at Sullivan, Missouri.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 93–ACE–06, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

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 proposals. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption ADDRESSES. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ACE–06." 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 601 East 12th Street, Kansas City, Missouri, 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, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. 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 procedure.

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 Sullivan, Missouri, extending from 700 feet AGL to 1200 feet AGL. The development of a SIAP based on a New NDB located on the Sullivan Regional Airport, Sullivan, Missouri, made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NBD SIAP at Sullivan Regional Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet or more above the surface of the earth, when designated in conjunction with an airport, 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 would 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 rule" 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, 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, Navigation (air).

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 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 Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ACE MO E5 Sullivan, MO [New]

Sullivan Regional Airport, MO
(Lat. 38°14'01"N, long. 91°09'53"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Sullivan Regional Airport and within 2.5 miles each side of the 068-degree bearing from the Sullivan Regional Airport extending from the 6.4-mile radius to 6.7 miles northeast of the airport.

* * * * *

Issued in Kansas City, Missouri, on January 7, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–2208 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–07]

Proposed Revisions of Class E Airspace; Harper Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace at Harper Municipal Airport, Harper, Kansas, by excluding Park, Kansas, airport, a private airport northeast of Harper, Kansas, from

controlled airspace. Prior to the Airspace Reclassification project, the "transition area" for Harper was designed to exclude Park Airport. However, when the Harper airspace was modified to meet the new standards, the reference to the Park Airport was inadvertently omitted. The intended effect of this proposal is to delete Class E airspace above the Park, Kansas, Airport.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 93–ACE–07, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday except Federal holidays.

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: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

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 under the caption ADDRESSES. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ACE–07." 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 601 East 12th Street, Kansas City, Missouri, 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, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. 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 described the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Harper, Kansas, airport extending from 700 feet above the surface. The intended effect of the change is to delete Class E airspace above the Park Airport (private) located northeast of Harper, Kansas. Prior to the Airspace Reclassification project, the "transition area" for Harper was designed to exclude Park Airport. However, when the Harper airspace was modified to meet the new standards, the reference to the Park Airport was inadvertently omitted. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface, when designated in conjunction with an airport, 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 would 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 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, when promulgated, will not have a significant 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, Navigation (air).

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 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 Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ACE KS E5 Harper, KS [Revised]

Harper Municipal Airport, KS
(Lat. 37°16'41" N, long, 98°02'36" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Harper Municipal Airport, excluding that airspace north of highway 160 and east of longitude 98°00'00" W.

* * * * *

Issued in Kansas City, Missouri, on January 7, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–2209 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Ch. II

[Docket No. 49385; Notice 94–4]

RIN 2105–AC03

Special Event Tours

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department seeks comment on a tentative proposal to expand its rules on Super Bowl tours to cover air tours to other types of special events. These Super Bowl rules require that operators of Super Bowl tours that are promoted as including game tickets must have those game tickets in hand or under contract before they advertise or sell the tours, and that they must refund the entire tour price to any customer who does not receive a promised game ticket. This initiative arises as a result of problems on certain tours to the 1994 Rose Bowl on which participants did not receive game tickets that were promoted as being included in the package, or were required to make additional payments in order to receive tickets.

DATES: Comments should be received by March 28, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 49385, room 4107, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide an original and one copy of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Consumer Affairs Division, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., room 10405, Washington, DC 20590. Telephone (202) 366–5952.

SUPPLEMENTARY INFORMATION: In conjunction with the Rose Bowl football game that was played in Pasadena, California on January 1, 1994, a large number of fans of the University of Wisconsin (one of the two teams participating in the game) purchased package tours to California. Many of those tours were promoted as including a ticket to the Rose Bowl game. However, a significant number of these individuals either did not receive the game tickets that they had been promised and did not gain admission to the game, or were required to make an additional payment after they arrived in Pasadena in order to obtain their tickets.

The Department of Transportation has general authority under section 411 of the Federal Aviation Act (49 U.S.C. 1381) to take action against companies that engage in unfair or deceptive practices in connection with air transportation. The Department's staff, with cooperation and support from the State of Wisconsin's Department of Justice, is actively investigating the Rose Bowl matter and will pursue any violations found. However, we wish to consider the desirability of maximizing the deterrent effect of our rules against consumer deception where tickets to special events are sold in connection with air transportation, and significantly increasing consumer remedies in cases where the purpose of a consumer's trip is frustrated. Therefore, the Department seeks comment on a proposal to extend its rules on Super Bowl tours to include air tours to other types of special events where admission to the event is advertised as being included in the package.

The Department's rules on Super Bowl charters are contained in title 14, part 380 of the Code of Federal Regulations (14 CFR part 380):

- Section 380.2 defines a Super Bowl charter as a charter flight that is represented by its charter operator as including tickets to the National Football League's Super Bowl game as part of its ground package.
- Section 380.18a states that a Super Bowl charter may not be advertised unless the operator has submitted verification to the Department [1] that the operator (1) is in physical possession of enough Super Bowl game tickets to provide them for a substantial number of seats on the charter, or (2) has a contract with the NFL or with an NFL team for such a number of game tickets, or (3) has a contract with another person who has a contract with the NFL or an NFL team for such a number of game tickets.
- Section 380.18a also states that a Super Bowl charter may not be sold unless the operator has submitted verification to the Department that the operator has possession of, or contracts for, enough game tickets to provide one to every person who is to receive one under the terms of the operator/participant contract for the charter.
- Section 380.31(c) states that if an operator receives a booking for which he or she does not have possession of or a contract for a game ticket, the operator must return that participant's money within three days, unless the participant has authorized the operator in writing to retain the payment while the operator seeks additional tickets.
- Sections 380.32(s), 380.33(a)(5) and 380.33(e) state that if Super Bowl game tickets are not supplied when promised, the affected participant must be sent a refund of the price of the entire charter package within 14 days after the return flight.

These rules came about following problems with game tickets for Super Bowl tours in the late 1970's (see 45 FR 1856, Jan. 9, 1980). The rules were limited to the Super Bowl because that was the only event where such problems had surfaced.

In addition to the Super Bowl rules in part 380, the Department has a policy statement at 14 CFR § 399.87 which states that it shall be an unfair or deceptive practice within the meaning of section 411 of the Federal Aviation Act to advertise or sell an air tour that is promoted as including a ticket to the Super Bowl game unless the operator has tickets or contracts for tickets in the manner described in 14 CFR 380.18a (see above). The principal purpose of this policy statement is to reach tours operated on scheduled air service, which are not covered by the part 380 charter rules. The part 399 policy statement mirrors § 380.18a, but does not include the other part 380 provisions described above. Most importantly, it does not include the requirement that the entire tour price be refunded if a game ticket is not provided.

The Department is tentatively proposing to issue a new rule that would contain the procedures of the Super Bowl provisions of both part 380 and part 399, and to extend this rule to other types of events. Like current § 399.87, the new rule would apply to tours on all forms of air transportation, not just charters. Like the existing Super Bowl charter rules in part 380, the new regulation would require the tour operator to refund the entire tour price to any participant who does not receive a promised event ticket, even if the tour were not on a charter. We anticipate that the new rule would also pick up the

[1] References to "the Board" in this rule refer to the Civil Aeronautics Board, the Department's predecessor in aviation economic and consumer matters. The Department of Transportation now administers this rule as authorized by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443; 98 Stat. 1703).

procedures of § 380.31(c), which would require an operator to refund any money received for a booking within a certain limited period of time if the operator has no contract for an event ticket for that person, unless the person has authorized the operator in writing to retain the payment while the operator seeks a ticket.

In concept, the new rule would apply to air tours that are advertised as including admission to a specific event. Beyond that, the Department seeks comment on what the scope of such a rule should be:

- Should it apply only to major sports events which would be listed in the rule (for example, the Super Bowl, college bowl games, the NCAA Final Four, the World Cup finals, the Olympics)? To any sports event? To religious events (for instance, the Passion Play in Oberammergau)? To any event?
- Should the rule apply to both charter and scheduled transportation? Should it appear in part 380, in part 399, in a new rule in a separate part, or some combination of the above?
- Should the rule contain only the advertising and sale restrictions of §§ 380.18a and 399.87, or should it also contain the "money back guarantee" of §§ 380.32 and 380.33 and/or the "booking rejection" and "contingent booking" procedures of § 380.31(c)?
- If the scope of the type of event covered by the rule (see first bullet) is broad and the rule contains the "money back guarantee" (see previous bullet), should procedures be included that would protect the operator from having to refund the entire tour price if a participant doesn't receive promised admission to something like a welcoming cocktail party? What types of procedures would accomplish this?
- Should the rule specifically ban last-minute or post-departure price increases for admission to the event, one of the problems that allegedly occurred on the 1994 Rose Bowl tours? This type of problem is not addressed in the existing Super Bowl rules, although it may be actionable under section 411 of the Federal Aviation Act as an unfair or deceptive practice. On charters this phenomenon is covered to some extent by § 380.33(b), which prohibits any increase in any charter price less than 10 days before departure. Should the new rule on special event tours contain such a requirement?
- Some tours are promoted in conjunction with a special event, but do not include, and do not represent that they include, admission to the event. For example, there have been tours to the Super Bowl host city during the Super Bowl weekend that prominently feature "Super Bowl" in the headline of advertisements and flyers, but which do not include game tickets. Should the new rule ban this practice, or require affirmative, prominent disclosure that admission to the event is not included?
- What would be the economic burdens of such a rule? Would the rule be impractical for events where the participants are known only a week in advance, e.g. the NCAA Final Four?

On September 16, 1992, the Department published a proposal to conduct a major overhaul of its air charter regulations, including part 380; see 57 FR 42864. We proposed to eliminate many existing charter requirements, including the Super Bowl provisions of part 380. (Some of the proposed changes to part 380's Super Bowl provisions are discussed at page 42866 (column 3) of the proposal.) The proposal noted that Super Bowl tours, including those operated on charters, would continue to be subject to § 399.87. In view of the problems with the 1994 Rose Bowl, however, the Department now is of the tentative opinion that the approach taken in the existing Super Bowl charter provisions (e.g., the "money back guarantee" among other things) remains appropriate. If this tentative conclusion is finalized in the instant rulemaking on special event tours, Super Bowl charter tours (as well as charter tours to other special events) would remain subject to requirements similar to those in the current Super Bowl charter provisions. As indicated above, however, the Department seeks comment on whether this proposed new rule on special event tours should appear only in part 399 or a new part, or whether it should also appear in part 380.

Regulatory Analyses and Notices

This ANPRM is considered to be a non-significant rulemaking under DOT regulatory policies and procedures, 44 FR 11034, because the proposal would have minimal economic impact, and accordingly no regulatory evaluation has been prepared. The ANPRM was not subject to review by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

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

I certify that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Issued this 27th day of January 1994 at Washington, DC.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–2199 Filed 1–27–94; 3:13 pm]

BILLING CODE 4910–62–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205B]

RIN 1218–AA40

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the record for the proposed revision of the regulation of scaffolds used in construction (part 1926, subpart L) (51 FR 42680, November 25, 1986). This reopening solicits additional information regarding written comments which pointed out that the proposed provisions for scaffold access did not explicitly cover scaffold stairways (stair/towers) and which suggested criteria for inclusion in the final rule. Through this notice, the Agency also requests input on suggested regulatory language to address the use of chimney bracket scaffolds and tank builders' scaffolds; incorporates the scaffold-related materials from the record for the proposed general industry standard for walking and working surfaces (part 1910, subpart D) (Docket S–041, 55 FR 13360, April 10, 1990); and incorporates an August 1993 NIOSH report (titled Fatal Injuries to Workers in the United States, 1980–1989: A Decade of Surveillance) on fatal injuries to workers. The new information and evidence received as a result of this action will be used by the Agency in developing its final rule for scaffolds used in the construction industry.

DATES: Written comments on the materials incorporated through the notice of reopening must be postmarked by March 18, 1994.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. S–205B, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

A. Scaffold Stairways

On November 25, 1986, OSHA proposed to revise the scaffold provisions of the construction standards (51 FR 42680). The proposal consolidated and updated the requirements for scaffolds. The Agency received 601 comments on the proposal and several hearing requests. OSHA held informal public hearings regarding proposed subpart L on March 22–23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearings, Judge Williams set posthearing comment periods which ended on May 9, 1988. On August 11, 1989, the Administrative Law Judge certified the hearing record.

Two subpart L commenters (Exs. 2–367 and 2–368) stated:

> After a review of the "Access" section [proposed § 1926.451(c)], it is noted that a reference to scaffold stair/towers (access units) has been omitted from the proposed revisions. The scaffold stair/towers are the most common and safest method of obtaining access to scaffold units and should be included within this Subpart.

In particular, one commenter (Ex. 2–368) suggested that OSHA insert a new paragraph § 1926.451(c)(5) as follows:

> Scaffold stair/towers shall:
> (i) Have inside and/or outside handrails;
> (ii) Have landing platforms at every level, with a 19" (48.3 cm) minimum width;
> (iii) Have width of stair unit at a minimum of 19" (48.3 cm) between handrails; and
> (iv) Have treads and landings of slip resistant surfaces.

Also, a commenter (Docket S–041, Ex. 3–414) on proposed part 1910 subpart D (Walking and Working Surfaces) stated:

> As in the case of guardrails, the stair rails section is based on the use of this product in permanently installed locations in buildings or industrial structures. It does not consider stair rails used in conjunction with scaffold applications.
>
> Scaffold suppliers utilize step units which have been fabricated specifically to be used as access to scaffold platforms. These step units are manufactured with hand rails which are sold as a component of these step units. The OSHA standard should state that these fabricated step units are acceptable for scaffold access. This will eliminate the confusion of the compliance officers in attempting to enforce permanent stair rail standards for scaffold access components.
>
> The standard should also indicate that stair angles listed in the OSHA Standard pertain to permanently installed stairs in structures and are not intended for use in designing temporary scaffold access components.

The failure to address scaffold stairways in proposed subpart L was inadvertent. OSHA is considering including the above-mentioned criteria for scaffold stairways, as well as a definition for that term, in subpart L. OSHA notes that, although two commenters used the term "stair/towers", the Agency is using the term "scaffold stairways" in the belief that it more fully describes the equipment used. OSHA also notes that these stairways are used as part of a scaffold. The Agency solicits public comment in these areas.

The Agency believes that scaffold stairways present a serious fall hazard. OSHA is considering what protection should be required for employees who use such stairs. In particular, the Agency is considering the following issues:

1. Whether the Agency should adopt the provisions suggested by the commenters;
2. Whether the Agency should specify that scaffold stairways must have handrails, stair rails, midrails, screens, mesh, intermediate vertical members or equivalent intermediate structural members;
3. Whether OSHA should set other provisions for scaffold stairways;
4. What criteria OSHA should set for any equipment or procedures that it requires in conjunction with the use of scaffold stairways; and
5. Whether OSHA should allow scaffold stairways which comply with the requirements of subpart L to be used for access to structures other than scaffolds.
6. Whether OSHA should set a maximum and a minimum angle from the horizontal for scaffold stairways covered by subpart L? If yes, what should those angles be?
7. Whether OSHA should require that scaffold stairways have riser heights and tread depths that are uniform within each flight of stairs? If yes, should the maximum variation be ¼ inch (0.6 cm) as is required in § 1926.1052(a)(3)?

In particular, the Agency is seeking input on the extent to which requirements for scaffold stairways covered by subpart L should be consistent with the general provisions for stairways found in existing § 1926.1052 or in proposed §§ 1910.25 and 1910.28. For example, § 1926.1052(c)(3) requires that stair rail systems installed before March 15, 1991, be no less than 30 inches (76.2 cm) high and that those installed after March 15, 1991 be no less than 36 inches (91.4 cm) high. In addition, proposed § 1910.28(c)(2) requires that stair rails and handrails installed before 60 days after the effective date of the final rule be at least 30 inches (76.2 cm) high, that handrails installed subsequently be 30 inches (76.2 cm) to 37 inches (94 cm) high, and that stair rails installed subsequently be at least 36 inches (91.4 cm) high. Also, proposed § 1910.28(c) sets requirements for the following:

—Finger clearance between handrails ((c)(3));
—Surfacing handrails and stair rail systems to prevent puncture wounds, abrasion injuries or snagging of clothing ((c)(4));
—Limiting the dimensions of openings in a stair rail system to 19 inches (48.3 cm) ((c)(5));
—Handrails to have the shape and dimension necessary to provide a firm handhold ((c)(6)); and
Preventing the ends of stair rail systems from presenting projection hazards ((c)(7)).

In addition, OSHA is considering if the unprotected sides and edges of landings for scaffold stairways covered by subpart L need to be provided with guardrail systems that meet the requirements of proposed subpart L alone, or whether those guardrails must also satisfy the criteria of proposed subpart M (51 FR 42718, November 25, 1986).

B. Chimney Bracket Scaffolds

On March 29, 1993, OSHA (58 FR 16509) reopened the rulemaking record for proposed subpart L for information and comments regarding the fall hazards from work on chimney bracket scaffolds. Such scaffolds are usually used on tall chimneys and similar structures in the course of repairs, demolition and other construction operations. The scaffolds are usually circular because the structures on which they are used (such as some chimneys, stacks and tanks) are usually roughly cylindrical in shape. However, since these scaffolds are also used on structures that have other shapes (e.g., rectangular chimneys), the scaffolds are not always circular.

OSHA expressed concern in the March 29 notice that proposed § 1926.451(e) might not adequately address fall hazards on chimney bracket scaffolds and requested responses to 17 questions regarding the use of those scaffolds. On May 26, 1993, the Agency (58 FR 30131) extended the comment period until June 28, 1993.

Based on a comment (Ex. 34–33) received from the National Chimney & Cooling Tower Construction Safety and Health Advisory Committee, OSHA is considering the following language for inclusion in the final rule for subpart L:

> (a) Brackets shall be secured in place by at least one wire rope at least 1½ inch (1.3 cm) in diameter.

(b) A turnbuckle at least 1 inch (2.5 cm) in diameter shall be used to tension the securing wire rope.

(c) The scaffold, each of its components (except wire ropes) and the supporting structure shall meet the minimum strength requirements of proposed § 1926.451(a)(1) [four times the maximum intended load].

(d) Each wire rope shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope.

(e) Platform units shall be secured to the brackets.

(f) Platform units shall extend at least 12 inches (30.5 cm) beyond each bracket.

(g) The span of platform units from bracket to bracket shall not exceed 5 feet (1.52 m) on the outside of the brackets.

(h) Guardrail systems meeting the requirements of § 1926.451(e)(4) shall be provided.

(i) The supporting structure shall be inspected by a competent person before scaffold erection begins.

(j) Materials shall not be dropped to the outside of the structure.

(k) The scaffold shall be placed around the structure in only one direction.

(l) A wire rope at least 5/16 inches (0.8 cm) in diameter shall be placed around the structure for employees erecting or dismantling scaffolds so that the wire rope provides a safe anchorage for each affected employee's personal fall arrest system.

In addition, the Agency is considering if it is appropriate to require that employees working on chimney bracket scaffolds be protected from fall hazards both by a "Type I" guardrail, as would be required by proposed § 1926.451(e)(4), and by a personal fall arrest system. Also, OSHA is considering what provisions must be made for rescue of employees from chimney bracket scaffolds in the event of scaffold collapse or a medical emergency.

The Agency is also developing criteria for employers who would need to comply with these provisions. For example, OSHA is considering the following issues:

1. How would wire rope or other equipment be placed on a chimney, stack, tank or other structure to provide a safe anchorage point? Would compliance with the pertinent requirements of § 1910.66 appendix C be appropriate?

2. Is regulatory language other than that in proposed § 1926.451(f), *Falling object protection*, needed to address the hazards of materials dropping to the outside of a chimney structure;

3. What criteria should a competent person apply when inspecting a supporting structure prior to scaffold erection; and

4. How should employers secure platform units to the brackets so that they do not inadvertently detach?

5. Should OSHA set criteria (such as dimensions and materials used) for brackets used with chimney bracket scaffolds? What should those criteria be?

6. Should OSHA require a positive locking device on the bracket's hook that is placed over the wire rope? Would a positive locking device prevent the unintentional separation of the hook from the wire rope?

7. Should OSHA require that a "shoe" be placed on the bottom of the brackets at the contact point with the structure? Would a "shoe" reduce the possibility of lateral movement of the brackets?

8. Should OSHA require that a proper size thimble be used to connect the turnbuckle to the other end of rope?

9. Should OSHA specify a factor of safety of 4:1 for the horizontal wire ropes used with chimney bracket scaffolds as recommended by the only commenter (Ex. 34–33), or should the factor of safety be set at 6:1 as the Agency specifies elsewhere when wire ropes are used with scaffolds? OSHA is concerned that 4:1 factor of safety might be inadequate given the reduction in strength that occurs when wire rope clips are used as fasteners, and has placed a 6:1 factor of safety in paragraph (d) of the language set forth above for consideration.

10. How would the employer protect the wire ropes used to secure the scaffold and to provide anchorage for personal fall arrest systems from abrasion or other damage due to contact with the structure or scaffold?

11. Should OSHA specify that each platform unit on chimney bracket scaffolds extend at least 12 inches (30.5 cm) over its supports as recommended by the commenter, or at least 6 inches (15.2 cm) unless cleated or otherwise restrained as would be required by proposed § 1926.451(b)(6)?

The National Chimney & Cooling Tower Construction Safety and Health Advisory Committee (Ex. 34–33) stated that the brackets could be secured to a metal tank by welding rather than by use of a wire rope. OSHA notes that both existing (§ 1926.451(m)) and proposed (§ 1926.452(g)) subpart L regulate a similar type of scaffold, the carpenters' bracket scaffold. In addition, American National Standards Institute (ANSI) consensus standard, ANSI A10.8–1988 (Scaffolding Safety Requirements for Construction and Demolition Operations), already addresses carpenters' bracket scaffolds, but not chimney bracket scaffolds. Accordingly, the Agency is considering if the proposed requirements for carpenters' bracket scaffolds or the pertinent provisions of ANSI A10.8–1988 would provide appropriate guidance for employers using chimney bracket scaffolds when the brackets are secured by welding.

OSHA is concerned that the use of U-bolt wire rope clips as wire rope fasteners on the horizontal support ropes could result in damage to the dead end of a rope. As the rope is lowered, the live end must become longer due the increase in the circumference of the structure. In order to accomplish this, the dead end gradually becomes part of the live end. If the segment of the dead end that has become part of the live end has been damaged by the U-bolt wire rope clips, the ability of the rope to support the loads imposed on it may have been significantly reduced. OSHA is concerned that in this case the rope might fail. OSHA notes that there are other means of fastening wire ropes, such as double-saddle clips, that will not damage the dead end of the rope. Should OSHA prohibit the use of U-bolt wire rope clips on the horizontal support ropes of a chimney bracket scaffold?

The Agency solicits comments and suggestions, with supporting information, regarding the criteria needed for safe use of chimney bracket scaffolds.

In addition, OSHA is considering the following term and definition for inclusion in the final rule:

"Chimney bracket scaffold" means a supported scaffold consisting of a platform supported by brackets which are secured in place around the circumference or perimeter of a chimney, stack, tank or other structure by one or more wire ropes placed in an approximately horizontal plane and tensioned by a turnbuckle.

The Agency requests comments on and any suggested changes to the above-mentioned term and definition.

C. Tank Builder's Scaffold

Two commenters (Exs. 34–41 and 34–42) who responded to the March 29, 1993, reopening of the record of subpart L (58 FR 16509) stated that OSHA should address tank builders' scaffolds in the final rule, and noted that on April 4, 1975, the Agency granted users of tank builder's scaffolds a permanent variance (40 FR 15139) from the requirements of existing §§ 1926.451(a)(4) (requiring guardrails and toeboards), (a)(5) (setting criteria for guardrails and toeboards) , and (a)(10) (setting criteria for scaffold planking). OSHA found that compliance with the provisions of the variance would provide employee protection equivalent to that attained through compliance with existing subpart L.

In light of that variance, OSHA is concerned that tank builders' scaffolds may need to be addressed specifically in the final rule. OSHA notes that both existing (§ 1926.451(m)) and proposed (§ 1926.452(g)) subpart L regulate a similar type of scaffold, the carpenters' bracket scaffold. In addition, ANSI A10.8–1988 (Scaffolding Safety Requirements for Construction and Demolition Operations) already addresses carpenters' bracket scaffolds, but not tank builders' scaffolds. Accordingly, the Agency is considering

if the proposed requirements for carpenters' bracket scaffolds would provide appropriate guidance for employers using tank builders' scaffolds. OSHA solicits comments and suggestions, with supporting information, on this issue.

Based on the requirements of the above-mentioned permanent variance and proposed subpart L, OSHA is considering the following term and definition for inclusion in the final rule:

"Tank builder's scaffold" means a supported scaffold consisting of a platform supported by brackets welded to the steel plates used to construct a tank.

The April 4, 1975, variance provided for the use of scaffolds in tank-building as follows:

(a) Loose tools and equipment shall be kept in well-designed tool containers. This does not include fit-up bar, key plates, key channels, or long handled maul which may be placed on the scaffold plank during the time they are required for work. The loose tool containers shall be secured to prevent their upset or dislodgement from the scaffold area.

(b) Areas beneath and far enough away from the base of the scaffold to contain anything that falls from above shall be roped off and posted with clearly visible signs stating: "Danger Overhead Work."

(c) A taut wire rope supported on the scaffold brackets shall be installed at the scaffold plank level between the innermost edge of the scaffold platform and the curved plate structure of the tank shell to serve as a safety line in lieu of an inner guardrail assembly. In the event the open space on either side of the rope exceeds 12 inches (30.5 cm), a second wire rope appropriately placed, or guardrails in accordance with [existing] § 1926.451(a)(5), shall be installed.

(d) Not more than three employees shall be working on a 10'6" span of scaffold planking at any one time.

(e) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be 10'6". These brackets shall be welded to the steel plates.

(f) Scaffold planks of rough full-dimensioned 2" (5.1 cm) × 12" (30.5 cm) × 12' (3.66 m) Douglas Fir or Southern Yellow Pine of Select Structural Grade shall be used. Douglas Fir planks shall have a fiber stress of at least 1900 lb/in² (130,929 n/cm²) and a modulus of elasticity of at least 1,900,000 lb/in² (130,929,000 n/cm²), while Yellow Pine planks shall have a fiber stress of at least 2500 lb/in² (172,275 n/cm²) and a modulus of elasticity of at least 2,000,000 lb/in² (137,820,000 n/cm²).

(g) All planking shall be secured from movement or overlapped in accordance with [existing] § 1926.451(a)(12).

(h) Guardrails shall be constructed of taut wire rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall be at least of equivalent strength, stability and height as those required for the 8 foot (2.44 m) span of 2" (5.1 cm) × 4" (10.2 cm) wood rails by [existing] 29 CFR 1926.451(a)(5). Guardrail supports shall be located at no greater than 10'6" (3.20 cm) intervals.

OSHA seeks comments on the requirements of the April 4, 1975, variance and on the following issues:

1. To what extent does the April 4, 1975, variance order adequately address the hazards to which employees are exposed while working from, under, or near scaffolds during tank-building operations?

2. Are the requirements set out in Items (a), (b), (d), (e), (f), (g), and (h) of the April 4, 1975, variance order adequately covered by the general rules found in proposed subpart L.

3. OSHA is concerned that compliance with Item (c) of the April 4, 1975, variance might conflict with proposed paragraph § 1926.451(b)(4) which would require that the front edge of platforms be positioned not more than 14 inches (35.6 cm) from the face of the structure worked on, unless Type I guardrails are erected along the open edge or body belt/harness systems are used to protect employees from falling. In particular, OSHA is considering:

(a) To what extent would the taut wire rope placed at the platform level between the innermost edge of the platform and the curved plate structure of the tank provide protection equivalent to that which would be required by proposed § 1926.451(b)(4)?

(b) Are employees exposed to hazards when a wire rope is used in this fashion? If so, what are those hazards and how can employees be protected from them?

(c) Should the maximum space between the platform and the wire rope be 12 inches (30.5 cm) as specified in the variance, or some other distance? Should the maximum space between the wire rope and the curved plate structure of the tank be 12 inches (30.5 cm) as specified in the variance, or some other distance?

(d) What is the greatest distance that the brackets can be apart without creating a space greater than 12 inches (30.5 cm)? What is the greatest distance that the brackets can be apart without creating a space greater than 14 inches (35.6 cm)? What, if any, feasibility problems would arise from the selection of one distance or the other?

(e) Are there any feasible means, other than installing a taut wire rope, to reduce the space between the scaffold and structure?

(f) Should OSHA specify a minimum diameter for the wire rope? If so, what should that diameter be?

4. If OSHA places provisions for tank builder's scaffolds in non-mandatory Appendix A, should those provisions be consistent with the provisions of the April 4, 1975, variance or with the proposed provisions of Appendix A?

5. Are there any hazards associated with use of tank builders' scaffolds that are not addressed by either the April 4, 1975, variance or by proposed subpart L?

6. Are there any provisions of proposed § 1926.451 which should not apply to tank builders' scaffolds?

D. NIOSH Study of Construction-related Fatalities.

In August 1993, NIOSH issued a study of construction-related fatalities titled Fatal Injuries to Workers in the United States, 1980–1989: A Decade of Surveillance. The Agency believes, given the passage of time since OSHA gathered information to draft the Preliminary Regulatory Impact Assessment for proposed subpart L, the NIOSH study will help the Agency assess the workplace hazards addressed by subpart L. Therefore, OSHA has decided that this new information should be incorporated into the rulemaking record as Exhibit 40 and that the public should have an opportunity to comment on that information.

E. Incorporation of Docket S–041 (Part 1910, Subpart D) Materials Related to Scaffolds

On April 10, 1990, the Agency proposed to update the requirements for protection of employees on walking and working surfaces (part 1910, subpart D, 55 FR 13360). The proposed general industry requirements for scaffolds were generally consistent with those proposed for construction. Proposed §§ 1910.25, *Stairs*; 1910.28, *Fall Protection Systems*; and 1910.30, *Scaffolds* generated public input which is being considered as OSHA drafts the final rule for scaffolds covered by subpart D. Some of those materials contain relevant information or raise scaffold-related concerns not addressed in the comments on proposed subpart L. The Agency believes that, in developing separate standards for general industry (part 1910) and for the construction industry (part 1926), the substance of those standards should be consistent, where appropriate. Therefore, OSHA has determined that the Agency needs to consider the scaffold-related information generated in the subpart D rulemaking when the Agency drafts the final rule for scaffolds in the construction industry. To this end, the Agency is incorporating the pertinent exhibits from the general industry rulemaking record (Docket S–041) into the record for the part 1926, subpart L rulemaking (Docket S–205B). The incorporated materials will be identified

in the subpart L docket as Exhibit 41, with attachments.

II. Public Participation

Comments

Written comments regarding the materials incorporated into the subpart L record through this notice must be postmarked by March 18, 1994. Four copies of these comments must be submitted to the Docket Office, Docket No. S–205B, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), and 29 CFR part 1911.

Signed at Washington, DC, this 26th day of January, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–2136 Filed 1–31–94; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG50

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning examinations acceptable for VA rating purposes. The amendment would increase the number of situations in which a private physician's statement may be accepted as a VA examination. The intended effect of the proposal is to allow earlier rating action on acceptable medical evidence with no additional burden to either the claimant or VA.

DATES: Comments must be received on or before April 4, 1994. Comments will be available for public inspection until April 12, 1994.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 3.326 of title 38, Code of Federal Regulations, requires VA to authorize a medical examination where a reasonable probability of a valid claim for disability compensation or pension benefits is indicated. A "claim for disability compensation or pension benefits" means an original or reopened claim or a claim for increased benefits. Section 3.326 also establishes alternative types of medical evidence which in specified cases may be deemed a "Department of Veterans Affairs examination" and accepted for rating purposes. Although a statement from a private physician which includes clinical manifestations and substantiation of a diagnosis through such medically acceptable diagnostic techniques as pathological studies, X-rays, and laboratory tests may be accepted to rate pension and certain other claims, it may not be accepted as the sole basis for a rating decision in compensation claims.

We propose to amend § 3.326(d) to permit acceptance of a private physician's statement for rating purposes in claims for increased compensation due to the increased severity of service-connected disabilities. Since the basic issue of service connection has already been resolved in these claims, a statement from a private physician which meets the requirements of § 3.326(d) contains medical evidence acceptable for rating purposes with no need for verification through a VA examination. Furthermore, acceptance of this type of medical evidence will permit earlier decisions on claims for increase by removing the need for VA to schedule, conduct, and review the results of an additional examination.

We also propose to clarify the other types of claims in which a private physician's statement may be accepted for rating purposes by revising the current wording of the list of such claims in § 3.326(d). We further propose to remove the last sentence of § 3.326(b), which states that evidence of permanent and total disability will not be required in pension claims for veterans who have attained age 65. The Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, eliminated the presumption of total disability for these veterans with respect to claims filed after October 31, 1990. Finally, we propose to correct the authority citation in § 3.351(a)(2).

We are proposing to make this amendment effective 30 days after date of publication of the final rule.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 3

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

Approved: October 4, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended to read as follows:

Part 3—Adjudication

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

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

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

§ 3.326 [Amended]

2. In § 3.326, paragraph (b) is amended by removing the last sentence.

3. In § 3.326, paragraph (d) is revised and an authority citation is added to read as follows:

§ 3.326 Examinations.

* * * * *

(d) A statement from a private physician that includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and

laboratory tests as appropriate, may be accepted for rating the following claims without further examination, provided it is otherwise adequate for rating purposes: (1) A veteran's claim for increased compensation based either on the increased severity of a service-connected disability or on his or her spouse's need for aid and attendance under 38 U.S.C. 1115(1)(E); (2) a veteran's pension claim, including housebound and aid and attendance benefits; (3) a surviving spouse's claim for housebound or aid and attendance benefits; (4) a surviving parent's claim for aid and attendance benefits; or (5) a claim by or on behalf of a child based on permanent incapability of self-support (see § 3.356 of this part).

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

§ 3.351 [Amended]

4. In § 3.351(a)(2), the authority citation is revised to read as follows: "(Authority: 38 U.S.C. 1115(1)(E))."

[FR Doc. 94-2110 Filed 1-31-94; 8:45 am]
BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS CA 57-1-6003; FRL-4824-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from light and medium duty motor vehicle assembly plants, and pumps and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; and reactive organic compound (ROC) emissions from facilities that apply coatings to metal parts and products and polyester resin material operations.

The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated these rules and is proposing a limited approval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before March 3, 1994.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Ventura County Air Pollution Control District, Rule Development Section, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1195.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 EPA promulgated a list of ozonenonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area (SF-Bay Area) and the Ventura County Area.43 FR 8964; 40 CFR 81.305. Because the SF-Bay Area and the Ventura County Area were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. The SF-Bay Area and the Ventura County Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that BAAQMD and VCAPCD's portion of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The SF-Bay Area is classified as moderate and the Ventura County Area is classified as severe[2]; therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990, September 14, 1992, November 12, 1992, and May 13, 1993, including the rules being acted on in this document. This document addresses EPA's proposed action for BAAQMD Rule 8-13, Light and Medium Duty Motor Vehicle Assembly Plants; BAAQMD Rule 8-25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals (adopted on March 4, 1992); VCAPCD Rule 74.12, Surface Coating of Metal Parts and Products (adopted November 17, 1992); and VCAPCD Rule 74.14, Polyester

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] BAAQMD and VCAPCD retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

Resin Material Operations (adopted September 14, 1992). These submitted rules were found to be complete on February 28, 1991 (BAAQMD Rule 8–13), November20, 1992 (VCAPCD Rule 74.14), April 28, 1993 (BAAQMD Rule 8–25), and July 19, 1993 (VCAPCD Rule 74.12) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for limited approval and limited disapproval.

Rule 8–13 controls volatile organic compound (VOC) emissions from operations at light and medium duty motor vehicle assembly plants; Rule 8–25 controls VOC emissions from pumps andcompressors; Rule 74.12 controls reactive organic compound (ROC) emissions from facilities that apply coatings to metal parts or products; and Rule 74.14 controls VOC emissions from polyester resin material operations. VOCs contribute to the production of ground level ozone and smog. BAAQMD Rule 8–13 and BAAQMD Rule 8–25 were originally adopted as part of the District's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Rules 74.12 and 74.14 are new rules which have been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD Rule 8–13, BAAQMD Rule 8–25, VCAPCD Rule 74.12, and VCAPCD 74.14.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA's interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to BAAQMD Rule 8–13 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources (Vol II; Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks)", (EPA–450/2–77–008), May 1977; the CTG applicable to BAAQMD Rule 8–25 is entitled, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing" (EPA–450/3–83–006), U.S. EPA, March 1984; and the CTG applicable to VCAPCD Rule 74.12 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources Coating of Miscellaneous Metal Parts and Products", EPA–450/2–78–0–015, June 1978. For some source categories, such as polyester resin material operations (VCAPCD Rule 74.14), EPA did not publish a CTG. In this case, the VCAPCD made a determination of what controls were required to satisfy the RACT requirement by reviewing the operations of facilities with the affected source category. In that review, the technological and economic feasibility of the proposed controls were considered. Additionally, for both CTG and non-CTG rules, the District may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD submitted Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants, includes the following revisions from the current SIP rule:

- Exemptions for miscellaneous coatings and constrained coating lines were deleted and the applicable coating limits from Rules 8–19 (Surface Coating of Miscellaneous Metal Parts and Products) and 8–31 (Surface Coating of Plastic Parts and Products) were incorporated into the rule.
- VOC limits were established on a "solids-applied basis".
- Several new definitions were added to clarify references made within the rule.
- A new compliance schedule was developed.
- The recordkeeping section was revised to require monthlyrecords instead of annual records.

BAAQMD submitted Rule 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals, includes the following revisions from the current SIP rule:

- Pump and compressor leak standards are reduced to 1000 ppm effective January 1993.
- Several exemptions were eliminated to broaden the scope of the rule.
- New definitions were added to clarify the rule.
- Test method requirements were added.
- Visual inspection requirements were revised.

VCAPCD's Rule 74.12, Surface Coating of Metal Parts and Products, is a new rule and includes:

- Limits for the ROC content of metal surface coatings and solvents used to clean coating application equipment and metal surfaces prior to coating.
- The use of add-on equipment to control emissions of ROCs if noncompliant coatings are used.
- Requirements for monthly records of complying coatings and daily records of noncompliant coating applied.
- Test methods are included to determine compliance.

VCAPCD's Rule 74.14 is a new rule which controls emissions from polyester resin materials operations and includes the following provisions:

- Emission requirements based on the monomer content of the resin material.
- Requirement that resin material be applied by specified transfer efficient methods.
- ROC content limits, usage limits and disposal specifications for cleaning materials.
- Add-on equipment may be used to reduce the emissions of noncompliant resin materials.
- Recordkeeping and test method requirements have been added.

EPA has evaluated BAAQMD's submitted Rules 8–13 and 8–25 and VCAPCD's submitted Rules 74.12 and 74.14 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of more stringent requirements in submitted BAAQMD Rule 8–25 should lead to more emission reductions.

Although BAAQMD Rule 8–13, BAAQMD Rule 8–25, VCAPCD Rule

[3] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

74.12, and VCAPCD Rule 74.14 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. BAAQMD Rules 8–13 and 8–25 contain two deficiencies, referencing of test method ST–7 for determination of control efficiency and the lack of recordkeeping for add-on equipment. (A detailed discussion of the rules can be found in the Technical Support Document (TSD) dated July 2, 1993 (Rule 8–13) and May 14, 1993 (Rule 8–25).) VCAPCD Rule 74.12 contains specialty coatings that exceed the CTG limit of 420 grams per liter and VCAPCD Rule 74.14 references a test method that has not been approved by EPA. (A detailed discussion of these rules can be found in TSDs dated June 10, 1993). Because of the deficiencies cited above, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD submitted Rules 8–13 and 8–25 and VCAPCD submitted Rules 74.12 and 74.14 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the BAAQMD and VCAPCD and are currently in effect in those local areas. EPA's limited disapproval action in this NPR does not prevent a local agency or EPA from enforcing these rules.

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

Regulatory Process

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

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

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal 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 Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request.This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: December 22, 1993.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–615 Filed 1–31–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

48 CFR Chapter 12

[Docket 49356; Notice 94–1]

RIN 2105–AB75

Revision of Department of Transportation Acquisition Regulations

AGENCY: Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department is proposing to revise the Transportation Acquisition Regulation (TAR). The TAR has been rewritten in its entirety to eliminate coverage that is unnecessary (e.g., duplicates the Federal Acquisition Regulation (FAR) or other directives; adds no value), to present clear coverage that is written in plain English, and to retain only that coverage considered suitable for a regulation. These efforts

would create a 1994 edition of the TAR that is in line with the Reinventing Government initiatives by creating a simpler, more comprehensible, and less burdensome regulation. The 1994 edition of the TAR would replace the 1988 edition.

DATES: Comments on the proposal must be received on or before April 4, 1994.

ADDRESSES: Interested parties should submit written comments, preferably in triplicate, to Docket Clerk, Docket No. 49356, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC, 20590. Please cite TAR rewrite in all correspondence concerning this proposal.

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler, Office of Acquisition and Grant Management, M–61, 400 Seventh Street SW., Washington, DC 20590: (202) 366–4272.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation (DOT) conducted a comprehensive review of the September 1988 version of the Transportation Acquisition Regulation (TAR) with the goal of streamlining processes, removing guidance applicable to DOT internal operating procedures, and eliminating unnecessary burdens. As a result, the Transportation Acquisition Regulatory Council System, under the direction of the Senior Procurement Executive, has undertaken the complete rewrite of the TAR.

The rewrite project was conducted in consonance with the National Performance Review (NPR) initiatives. Under the Transportation Acquisition Regulatory Council System, all elements of the DOT had an opportunity to participate in the development of the new TAR, and to devise processes that were the most efficient and least burdensome on its users. The same holds true for the delegations of authority and responsibility for internal acquisition functions. Authority and responsibility have been delegated as low as is reasonable or permitted by higher level regulation or statute. These changes empower employees in accordance with the NPR initiatives.

The project examined all DOT acquisition issuances including internal directives, orders, and notices to ensure the information is necessary, accurate and current, and located in the appropriate document. When rewriting the TAR, care was taken to eliminate unnecessary coverage including clauses and forms, and to remove coverage pertaining to internal DOT operations (including delegations of authority) and to place any needed coverage into internal guidance. The goal of the rewriting effort was to ensure that the TAR would contain only that coverage appropriate for an acquisition regulation and enable continual improvement of the regulation through new, innovative processes and streamlining initiatives.

The rewritten TAR is being published for public comment. Comments on this proposal are requested within 30 days of this publication in order to implement the NPR initiatives as expeditiously as possible. All public comments received in response to this notice will be considered in developing the final version of the TAR. Parties responding to this notice are requested to separate their comments by TAR part and address the specific cite (e.g., 1201.104–1).

The rewritten TAR would be rearranged and, in some instances, moved to other parts, to more closely align the TAR text with the FAR text it implements or supplements. The rewritten TAR includes changes which are identified in the following discussion of revisions by part.

Those parts which contain no coverage, but have been reserved, are Parts 1211, 1218, 1220, 1221, 1225, 1226, 1229, 1230, 1238 through 1241, 1243, 1244, and 1248 through 1251.

Part 1201, Federal Acquisition Regulations System. Section 1201.104 would be changed to clarify the TAR numbering system. Coverage specifying the Office of Acquisition and Grant Management as having responsibility for the review and coordination of cases submitted by DOT to the Civilian Agency Acquisition Council would be reflected in Section 1201.201. Section 1201.301 would clarify that the Senior Procurement Executive would be delegated the authority to issue agency acquisition regulations and procedures under FAR 1.301 and would describe the TAR Council System, how changes will be made to the TAR, and when those changes would be effective. The TAR Council System provides a structure and a control and compliance mechanism within which changes to the TAR will be made. This is discussed in Section 1201.304. The authority for granting individual deviations to the FAR and TAR would be delegated down to the Head of the Contracting Activity, as reflected in Section 1201.403. Section 1201.602 would be changed to clearly state that procurements are to be made by authorized personnel and provides the action which may occur against individuals causing an unauthorized commitment.

Part 1202, Definitions of Words and Terms. A definition for "Agency," "Federal agency," or "Executive agency" would be added. The definitions for the "Head of the agency" and "Head of the Contracting Activity" would be changed. The definition for the "Department of Transportation" would be updated. The terms "Operating administration," "Head of the operating administration," "Chief of the Contracting Office," "Contracting activity," and "contracting officer," would be defined.

Part 1203, Improper Business Practices and Personal Conflicts of Interest. Subpart 1203.1 would be revised to provide the statutory reference for standards of ethical conduct for Executive Branch employees, and to provide procedures for processing violations or possible violations. Subparts 1203.5, 1203.6, 1203.70 and 1203.71 would be removed and new Subparts 1203.1, 1203.2, 1203.3, 1204.4, 1203.5 and 1203.8 would be included to provide procedures for reporting/processing suspected improper business practices.

Part 1204, Administrative Matters. Would remove DOT internal contract distribution and acquisition funding requirements; would increase the quick closeout threshold from $1 to 3 million or less to reduce the backlog of contracts pending closeout; would relocate from part 1253, DOT Forms F 4220.4, F 4220.45 (formerly F 4220.5) and F 4220.46 (formerly F 4220.6) and DOD Form 882 which apply to contract closeouts.

Part 1205, Publicizing Contract Actions. Would include a recommendation for meeting the FAR requirement for public examination of solicitations. Would include information concerning the availability of the DOT annual procurement forecast. Would revise the policy for furnishing contract award information and include a reference to the DOT Freedom of Information Act (FOIA) rules and regulations to cover requests for specific contract award information. Would remove internal DOT administrative guidance.

Part 1206, Competition Requirements. Subparts 1206.1, and 1206.3 would be removed because they provide internal administrative guidance. Subpart 1206.5 would be replaced with new coverage on Competition Advocate requirements.

Part 1207, Acquisition Planning. This part would reflect the deletion of TAR clauses 1252.207–70, Implementation of Right of First Refusal of Employment, and 1252.207–71, Financial and Technical Ability, as unnecessary. TAR 1207.370 would be deleted since FAR provides sufficient guidance and

Section 1207.401 would be removed because it provides internal guidance.

Part 1208, Required Sources of Supplies and Services. This part would be deleted since it duplicated coverage in the FAR.

Part 1209, Contractor Qualifications. This part would be modified to remove internal administrative coverage at (TAR) 48 CFR 1209.104 Standards and 1209.3 First Article Testing and Approval. Subpart (TAR) 48 CFR 1209.4 Debarment, Suspension and Ineligibility would be revised to include debarment and suspension procedures.

Part 1210, Specifications, Standards, and Other Purchase Descriptions. The coverage at (TAR) 48 CFR 1210.004–70 and (TAR) 48 CFR 1210.004–71 would be deleted as unnecessary since it is covered in FAR. The clause (TAR) 48 CFR 1252.217–70 (renumbered 1252.210–71), Index for Specifications, would be transferred from part 1217 and placed in the more appropriate part 1210. The provision at (TAR) 48 CFR 1252.210–70, Brand Name or Equal, would be modified to permit its use in all solicitations when appropriate. Guidance for the U.S. Coast Guard (USCG) would be added which incorporates the USCG clause at 1252.210–90, Bar Coding Requirement, when the bar coding of supplies is necessary.

Part 1212, Contract Delivery or Performance. Would delete clause (TAR) 48 CFR 1252.212–71, Notice of Delay, because it duplicated coverage in the FAR. Would add (TAR) 48 CFR 1212.302 coverage on Priorities and Allocations, to advise that the Coast Guard is the only DOT operating administration given authority by the Department of Commerce to issue rated orders and contracts.

Part 1213, Small Purchase and Other Simplified Purchase Procedures. Would remove internal administrative guidance concerning small purchases, basic purchasing agreements, and imprest funds. Would include in the USCG guidance to part 1252, the USCG clause (TAR) 48 CFR 1252.213–90, Evaluation Factor for Coast Guard Performance of Bar Coding Requirement.

Part 1214, Sealed Bidding. Subsection (TAR) 48 CFR 1214.205–1 would provide agency procedures for notifying prospective bidders that they have been added to solicitation mailing lists, and guidance for obtaining supplemental information to the Standard Form 129. Section (TAR) 48 CFR 1214.303 would provide guidelines for receiving a withdrawal of a bid in person. Other coverage would be deleted as unnecessary.

Part 1215, Contracting by Negotiation. Coverage pertaining to precontract costs would be covered under a more appropriate part 1231. The provision at (TAR) 48 CFR 1252.209–71, Disclosure of Conflicts of Interest, would be transferred to a more appropriate part 1209. The clause at (TAR) 48 CFR 1252.215–71, Key personnel and facilities, would be edited and renumbered as 1252.215–70. For ease of completion, the clause at (TAR) 48 CFR 1252.215–72, Cost Proposal Instructions, would be edited and reformatted into TAR form DOT F 4220.44, Contract Pricing Summary (see (TAR) 48 CFR 1215.804–6). Coverage would be added to (TAR) 48 CFR section 1215.413 to explain under what conditions proposals may be released outside the Government. (TAR) 48 CFR 1215.612 would be revised to identify location of procedures for formal source selection. (TAR) 48 CFR 1215.804 would be modified to remind contracting officers when partial/limited cost or pricing data may be required and the circumstances when certified cost or pricing data may be required. (TAR) 48 CFR 1215.970 pertaining to profit for letter contracts (i.e., an undefinitized action) would be transferred from (TAR) 48 CFR 1216.603 and expanded to include all undefinitized actions. Other coverage would be deleted because it was unnecessary or redundant with the FAR.

Part 1216, Types of Contracts. The clause at (TAR) 48 CFR 1252.216–71, Evaluation of Proposals Subject to Economic Price Adjustment, would be modified to streamline the coverage. The clauses at (TAR) 48 CFR 1252.216–72 and 1252.216–73 would be deleted as superfluous and a clause at (TAR) 48 CFR 1252.216–74, Settlement of Letter Contract, would be added to specify that the definitized contract results in the settlement of the letter contract. The remainder of the coverage would be removed because it provides internal administrative guidance or would be deleted as unnecessary.

Part 1217, Special Contracting Methods. Subparts 1217.1 and 1217.4 would be removed because they contained internal administrative guidance. Subpart 1217.1 would be replaced with new coverage on multi-year procurement. The clauses prescribed in Subpart 1217.7000 would be revised to reflect simpler language. Subpart 1217.71 would be updated to reflect terminology changes.

Part 1219, Small Business and Small Disadvantaged Business Concerns. This part would be modified to remove internal administrative guidance and to cancel the class set-aside for construction contracts since construction contracts are now covered by the Small Business Competitiveness Demonstration Program. A clause at (TAR) 48 CFR 1252.219–70 would be added to provide the address for submission of the SF–295, Summary Subcontract Report. The coverage would include DOT's 10 Targeted Industry Categories previously published for public comment in 54 FR 24069, as amended by 58 FR 27613, and the increase to the Emerging Small Business Reserve Amount published in 56 FR 46656.

Part 1220, Labor Surplus Area Concerns. This part would be modified to add coverage required by Pub. L. 101–225, Coast Guard Authorization Act of 1989, Section 206. A USCG clause at (TAR) 48 CFR 1252.220–90, Local Hire Provisions, would be added for use in all contracts.

Part 1222, Application of Labor Laws to Government Acquisitions. Would revise the prescription for clause 1252.222–72 to permit all DOT operating administrations to use it when warranted. Would delete clauses 1252.222–75, 1252.222–77, and 1252.222–79 which are superseded by FAR clauses. Would remove DOT internal administrative guidance and make editorial changes to clarify coverage on admittance of union representatives to DOT installations. Would add the assignment of a DOT labor coordinator. Would add 1222.406–9 to prescribe form DOT 4220.7 which is now illustrated under 1253.

Part 1223, Environment, Conservation, Occupational Safety, and Drug-Free Workplace. Would remove internal administrative guidance dealing with the submission of notifications delaying contract awards. Would include clause 1252.223–70, Removal or Disposal of Hazardous Substances-Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

Part 1224, Protection of Privacy and Freedom of Information. Would revise numbering to correspond to FAR coverage. Would reword coverage to more clearly define the applicability of the Privacy Act of 1974 and include guidance for requesting contract information under FOIA.

Part 1225, Foreign Acquisition. Internal administrative requirements would be removed. A supplement would be added which contains Buy American Act requirements for steel and manufactured products pertaining only to the Federal Aviation Administration.

Part 1227, Patents, Data and Copyrights. This part would be modified

to remove coverage at (TAR) 48 CFR 1227.201–1, 1227.302, and 1227.409 since the coverage was already in the FAR.

Part 1228, Bonds and Insurance. Would include a requirement for providing coverage for taxes imposed by the U.S. in performance bonds. Would substitute a recommendation to seek the advice of legal counsel concerning legal remedies which may be available under the Miller Act in lieu of specifying legal rights. Would revise the payment method for records obtained under FOIA by referencing the DOT FOIA regulation. Would remove the coverage at (TAR) 48 CFR 1228.106–7 concerning withholding contract payments and the right of subrogation to contract funds by a surety because it was confusing and unnecessary. Would renumber clauses 1252.228–70, Accident and Fire Reporting, 1252.223–71, Protection of Human Subjects, and 1252.228–72, Loss of or Damage to Leased Aircraft to remove a previously "reserved" TAR clause number. Would include in the USCG guidance to part 1252, USCG clause 1252.228–90, Notification of Miller Act Payment Bond Protection.

Part 1231, Contract Cost Principles and Procedures. Precontract cost coverage would be transferred from part 1215. In addition, to assist contracting officers and provide ready identification by contractors for the allowance of precontract costs, the clause at (TAR) 48 CFR 1252.231–70, Date of Incurrence of Costs, would be added.

Part 1232, Contract Financing. Would remove DOT internal administrative guidance. Would remove paragraphs which paraphrase sections of FAR part 32. Would add Appendix A which is instructions for completing SF 1034s and SF 1035s submitted for payment under other than fixed price contracts.

Part 1233, Protests, Disputes, and Appeals. Would remove internal administrative guidance concerning protests. Would include coverage concerning DOT Alternative Dispute Resolution (ADR) procedures, and location of DOT ADR resolution specialist and preferred neutral to perform the functions set forth in the Administrative Disputes Resolution Act.

Part 1234, Major System Acquisition. The coverage would identify where DOT's internal operating procedures are located for the implementation of the Office of Management and Budget Circular A–109.

Part 1235, Research and Development Contracting. Subpart 1235.003 would be removed and replaced with new coverage designated as 1235.003 which covers cost sharing. Internal administrative guidance on scientific and technical reports at Subpart 1235.010 would be removed. The coverage at (TAR) 48 CFR 1235.070 and the clause at (TAR) 48 CFR 1252.235–70 on recoupment of development costs would be deleted.

Part 1236, Construction and Architect-Engineer Contracts. Would remove internal administrative guidance regarding government estimates of construction costs, liquidated damages provisions, award of construction contracts to architect-engineer firms, agenda for pre-construction conferences, conduct of architect-engineer evaluation boards, and negotiation of architect-engineer contracts. Would revise and reword criteria for selection of firms for architect-engineer contracts to eliminate duplication of FAR criteria and to more closely align with FAR coverage.

Part 1237, Service Contracting. Would delete erroneous information on personal services contracts. Would remove unnecessary coverage on consulting and stenographic reporting services. The previous 1237.70, mortuary services, would be redesignated as guidance applicable to only the USCG since USCG is the only DOT operating administration which contracts for these services. The TAR coverage would remove unnecessary DOT internal administrative guidance and delete DOD clause 22.237–7111. The other DOD clauses would be given DOT numbers.

Part 1242, Contract Administration. Would remove internal DOT administrative guidance and quick-closeout procedures and reinstate them under 1204. Would delete 1242.12 on novation and change of name agreements which is superseded by the FAR and would add clause (TAR) 48 CFR 1252.242–73, Contracting Officer's Technical Representative, to provide a standard DOT clause. Would add coverage on the affect of payment of invoices when contract administration is assigned to another office/agency.

Part 1243, Contract Modifications. Would delete unnecessary coverage.

Part 1244, Subcontracting Policies and Procedures. Would delete unnecessary coverage.

Part 1245, Government Property. Would revise the entire coverage and remove DOT internal administrative guidance and would delete unnecessary requirements or requirements superseded by the FAR. Would revise (TAR) 48 CFR 1245.505–14 to delete unnecessary reporting requirements and convert remaining information collection requirements to a standard format (Form DOT F 4220.43).

Part 1246, Quality Assurance. This part would be modified to remove internal administrative guidance at (TAR) 48 CFR 1246.702, and to move 1246.770 to USCG guidance at 1246.7.

Part 1247, Transportation. Provisions and clauses would be added to implement the requirements of FAR part 47 with the goal of streamlining the process and eliminating the need for each contracting officer to develop their own language to meet these requirements.

Part 1250, Extraordinary Contractual Actions. Would remove internal administrative guidance regarding contract adjustment boards, and the residual powers authority under Pub. L. 85–804.

Part 1252, Solicitation Provisions and Contract Clauses. Revisions in provisions and clauses are identified in the discussion of the part which prescribes use of the provision or clause.

Part 1253, Forms. Would delete DOD Forms DD 375, 1567, and 1568; DOT Forms F 4220.8 and F 4220.10; and FHWA Form 1140 which would be superseded by FAR forms. Would delete FAA Form 4450–2 as unnecessary. Would correct internal administrative errors on Form DOT F 4220.45 (erroneously numbered F 4220.5), Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts, and Form DOT F 4220.46 (erroneously numbered F 4220.6), Cumulative Claim and Reconciliation Statement. Would illustrate Form DOT F 4220.7, Employee Claim for Wage Restitution, which was previously referenced but not illustrated. Other revisions in forms are identified in the discussion of the part which prescribes use of the form.

B. Regulatory Flexibility Act

This proposal is not expected to have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged. An Initial Regulatory Flexibility Analysis has not been performed. Comments are solicited from small businesses and other interested parties and will be considered in the development of the final rule.

C. Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. 2105–0517; Administration: Office of the Secretary of Transportation; Title: Transportation Acquisition Regulation; Need for Information: To solicit, negotiate, award, and administer contracts in accordance with the Federal Acquisition

Regulation, other regulations, and statutes; Proposed Use of Information: to evaluate offers, ensure appropriate contract cost controls, and minimize conditions conducive to fraud, waste, and abuse; Frequency: on occasion; Burden Estimate: 56,375 hours; Forms(s): DOT F 4220.4, 7, 43, 44, 45, 46 and DD Form 882; Average Burden Hours Per Respondent: 1.372. Comments on the proposed information collection requirement should be sent to the DOT rulemaking docket for this proposed action and comments may also be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Department of Transportation.

This proposal revises recordkeeping and information collection requirements and require approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Chapter 12

Government procurement.

This NPRM is issued under delegated authority under 49 CFR part 1.59(q). This authority has been redelegated to the Senior Procurement Executive. Issued this 7th day of January 1994, at Washington, DC.

Linda M. Higgins,

Director of Acquisition and Grant Management.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR chapter 12 is revised to read as follows:

PART 1201—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.
1201.102 Authority.
1201.103 Applicability.
1201.104 Issuance.
1201.104–1 Publication and code arrangement.
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1201.603–1 General.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

The Department of Transportation Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

1201.102 Authority.

The Secretary of Transportation has delegated the authority to issue Department of Transportation (DOT) procurement regulations (i.e., the TAR) to the Assistant Secretary for Administration who has redelegated this authority to the Senior Procurement Executive (SPE).

1201.103 Applicability.

(a) Statute, the FAR, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the FAR or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM) (stocked by the Government Printing Office): (1) Statute; (2) FAR or other applicable regulation; (3) TAR; (4) DOT Orders; and (5) TAM.

(c) The Maritime Administration may depart from the requirements of the FAR and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. 474(16), but shall adhere to those regulations to the maximum extent practicable. Exceptions from the requirements of the FAR and/or (TAR) 48 CFR chapter 12 shall be documented in Maritime Administration procedures or each contract file, as appropriate.

1201.104 Issuance.

1201.104–1 Publication and code arrangement.

(a) The TAR is published in: (1) The **Federal Register**; (2) cumulated form in the CFR; and (3) separate loose-leaf form.

(b) TAR is issued as Chapter 12 of Title 48 of the CFR.

1201.104–2 Arrangement of regulations.

(a) *General.* The TAR, which encompasses both Departmentwide and operating administration-unique guidance (see Subpart 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Operating administration-unique guidance contains the operating administration acronym directly preceding the cite/page number. The following acronyms apply when regulatory coverage is written:

FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
MARAD—Maritime Administration
NHTSA—National Highway Traffic Safety Administration
OST—Office of the Secretary
RSPA—Research and Special Programs Administration
SLSDC—Saint Lawrence Seaway Development Corporation
USCG—United States Coast Guard

(b) *Numbering*—(1) *Departmentwide guidance.* (i) The numbering illustrations at (FAR) 48 CFR 1.104–2(b) apply to the TAR.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix "12" followed by the complete FAR cite which may be down to the subparagraph level (e.g., (TAR) 48 CFR 1201.201–1).

(iii) Coverage in this Chapter 12 that supplements the FAR will use part, subpart, section and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (e.g., (TAR) 48 CFR 1201.301–70).

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a "70" or higher number, that implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may be down to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (TAR) 48 CFR 1201.201–1 contains subparagraphs (b) and (d) because only these subparagraphs, correlating to FAR, are being implemented by (TAR) 48 CFR chapter 12).

(2) *Operating administration-unique guidance.* Supplementary material for which there is no counterpart in the FAR or TAR shall be identified using chapter, part, subpart, section, or subsection numbers of "90" and up (e.g., the U.S. Coast Guard's acronym is

"USCG"; an USCG-unique clause pertaining to "Inspection and/or Acceptance" would be designated as "USCG clause at (TAR) 48 CFR 1252.246–90") and introductory captions will be followed by the acronym of the operating administration that the chapter, part, subpart, section, or subsection applies to (e.g., USCG-unique guidance pertaining to Miller Act notification would be designated "1228.9000 Miller Act Notification (USCG)".

(c) *References and citations.* (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross reference to the FAR in (TAR) 48 CFR chapter 12 will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the TAM (Transportation Acquisition Manual which is stocked by the Government Printing Office) in (TAR) 48 CFR chapter 12 will be cited by "TAM" followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be by the numbered cite only.

1201.104–3 Copies.

Copies of the TAR in **Federal Register**, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.

1201.105 OMB Approval Under the Paperwork Reduction Act.

(a) *Data collection by regulation.* The information collection and recordkeeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB). The applicable OMB control number for DOT is 2105–0517.

(b) *Data collection under proposed contracts.* Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR part 1320), OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations containing this type of information collection may be released prior to OMB approval provided: (1) A statement is included in the solicitation to the effect that contract award will not be made until OMB approval of the information collection requirements of the proposed contract has been obtained; and (2) enough time is permitted to allow receipt of OMB approval prior to contract award.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201–1 The two councils.

* * * * *

(b) The SPE is responsible for providing a DOT representative to the Civilian Agency Acquisition Council.

* * * * *

(d) The Office of Acquisition and Grant Management is responsible for Departmentwide review and coordination of cases containing proposed FAR revisions, as necessary, approval of DOT-generated cases, and submission of cases to the Civilian Agency Acquisition Council.

Subpart 1201.3—Agency Acquisition Regulations

1201.301 Policy.

(a)(1) *Acquisition regulations*—(i) *Departmentwide acquisition regulations.* The authority of the agency head under (FAR) 48 CFR 1.301(a)(1) is delegated to the Assistant Secretary for Administration.

(ii) *Operating administration acquisition regulations.* Operating administration acquisition regulations, and any changes thereto, shall be reviewed and approved by the SPE for insertion into the TAR as a TAR supplemental regulation before the SPE submits the proposed coverage for publication in the **Federal Register** in accordance with (FAR) 48 CFR 1.501. operating administration regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless specified otherwise.

1201.301–70 Amendment of (TAR) 48 CFR Chapter 12.

(a) Changes to (TAR) 48 CFR chapter 12 may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. These changes are to be submitted in the following format to the Office of Acquisition and Grant Management, 400 7th Street, SW., Washington, DC 20590:

(1) *Problem:* Succinctly state the problems created by current TAR language and describe the factual and/or legal reasons necessitating regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language and lining through the words being deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Collaterals:* Address the need for public comment (see (FAR) 48 CFR 1.301 and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (see (FAR) 48 CFR 1.301(c)).

(5) *Point of Contact:* Provide a point of contact for answering questions regarding the recommendation.

(b) The TAR will be maintained by the SPE through the TAR Council System (i.e., representatives from DOT operating administrations specifically designated to formulate Departmental acquisition policies and procedures).

(1) *Transportation Acquisition Circular (TAC).* TACs containing loose-leaf replacement pages which revise parts, subparts, or paragraphs (also see (TAR) 48 CFR 1201.301–72 of this subpart) will be used to amend (TAR) 48 CFR chapter 12. Each replacement page will bear at the top the TAC number and date. A vertical bar next to the coverage indicates that a change has been made.

(2) *TAR Notice (TN).*

(i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which is expected to be effective for a period of 1 year or less.

(ii) Each TN will terminate upon its specified expiration date.

1201.301–71 Effective date.

Unless otherwise stated, the following applies—

(a) Statements in TACs or TNs to the effect that the material therein is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, if solicitations are already in process or negotiations complete when the TAC or TN is received, the new information (e.g.,

forms and clauses) need not be included if it is determined by the chief of the contracting office that its inclusion would not be in the best interest of the Government.

1201.301–72 TAC or TN numbering.

TACs and Tns will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the last two digits of the fiscal year (e.g., TNs 93–01 and 93–02 indicate the first two Tns issued in fiscal year 1993).

1201.304 Agency control and compliance procedures.

(a) DOT shall control the proliferation of acquisition regulations by the TAR Council System. This (TAR) 48 CFR chapter 12 and any revisions thereto (except for paragraph (b) of this section) will be prepared and issued through the TAR Council System. The members of the TAR Council System shall represent their operating administration's viewpoints along with Departmentwide considerations and be selected for their superior expertise and acquisition knowledge. Further coordination (e.g., Offices of the Inspector General and General Counsel) beyond the TAR Council System may be recommended by the TAR Council to the SPE as deemed appropriate.

(b) Operating administration-unique regulations will not be processed through the TAR Council System, but shall be reviewed by operating administration legal counsel and submitted to M–60 for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

Subpart 1201.470—Deviations From the FAR and TAR

1.403 Individual deviations.

Individual deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Head of the Contracting Activity within the operating administration.

1.404 Class deviations.

Class deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Senior Procurement Executive unless (FAR) 48 CFR 1.405(e) is applicable.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.602–3 Ratification of unauthorized commitments.

* * * * *

(b) *Policy.* It is the policy of DOT that all procurements are to be made by only Government officials having authority to make such acquisitions. Procurements made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Consideration will be given to initiating disciplinary action against an employee who makes an unauthorized commitment.

1201.603–1 General.

Each DOT operating administration is responsible for appointing its contracting officers.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Subpart 1202.1—Definitions

1202.1 Definitions.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1202.1—Definitions

1202.1 Definitions.

(a) *Agency, Federal agency,* or *Executive agency* means the Department of Transportation.

(b) *Chief of the contracting office (COCO)* means the individual(s) responsible for managing the contracting office(s) within an operating administration.

(c) *Contracting activity* includes all the contracting offices within an operating administration and is the same as the term *procuring activity.*

(d) *Contracting officer* means an individual authorized by virtue of his/her position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Transportation Acquisition Regulation.

(e) *Department of Transportation (DOT)* means all of the operating administrations included within the Department of Transportation.

(f) *Head of the agency* or *agency head* means the Secretary of Transportation.

(g) *Head of the contracting activity (HCA)* means the individual responsible for managing the contracting offices within an operating administration who is a member of the Senior Executive Service or a flag officer.

(h) *Head of the operating administration (HOA)* means the individual appointed by the President to manage the operating administration. (For acquisition related matters, the Assistant Secretary for Administration is the HOA for the Office of the Secretary (OST)).

(i) *Operating administration* means the following components of DOT:

(1) Federal Aviation Administration (FAA);

(2) Federal Highway Administration (FHWA);

(3) Federal Railroad Administration (FRA);

(4) Federal Transit Administration (FTA);

(5) Maritime Administration (MARAD);

(6) National Highway Traffic Safety Administration (NHTSA);

(7) Office of the Secretary (OST);

(8) Research and Special Programs Administration (RSPA);

(9) Saint Lawrence Seaway Development Corporation (SLSDC); and

(10) United States Coast Guard (USCG).

(j) *Senior Procurement Executive* means the Director of the Office of Acquisition and Grant Management (M–60).

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

1203.101–3 Agency regulations.
1203.104–11 Processing violations or possible violations.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.
1203.204 Treatment of violations.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.

Subpart 1203.4—Contingent Fees

1203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.
1203.502–2 General.

Subpart 1203.8—Limitation on the Payment of Funds To Influence Federal Transactions

1203.806 Processing suspected violations

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1203.1—Safeguards

1203.101–3 Agency regulations.

(b) 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, supersedes the DOT regulation at 49 CFR part 99.

1203.104–11 Processing violations or possible violations.

(a)(1) When the contracting officer receives information of a violation or possible violation, and concludes that the reported violation or possible violation of the statutory prohibitions has no impact on the pending procurement, the contracting officer

shall forward the information required by (FAR) 48 CFR 3.104–11(a)(1) to the COCO for concurrence with the contracting officer's conclusion. If the COCO concurs with the conclusion, the contracting officer shall proceed with the award, and the COCO shall submit the information and conclusion to the HCA.

(2) When the COCO does not concur with the conclusion of the contracting officer, the COCO shall advise the contracting officer to withhold award, and the COCO shall promptly forward the information and documentation to the HCA.

(3) When the contracting officer determines that the information concerning a violation or possible violation will impact the pending procurement, the contracting officer shall promptly forward the information and documentation to the HCA.

(b) The HCA shall review the information transmitted in accordance with subparagraph (a)(1) through (a)(3) of this section and take appropriate action, as required by (FAR) 48 CFR 3.104–11(b).

(c) If the HCA believes that a violation has occurred and the information should be disclosed to a criminal investigative agency (e.g, the Department of Justice) or that there may be a possible violation, and an investigation should be conducted, the HCA shall obtain guidance from legal counsel and the IG prior to taking any action. If the HCA, pursuant to (FAR) 48 CFR 3.104–11(f), determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, a memorandum of the facts and circumstances shall be signed by the HCA and placed in the contract file.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct.

(c) The COCO shall report suspected violations to the Office of the Inspector General (J–1), 400 7th Street, S.W., Washington, DC, 20590, with a copy to General Counsel (C–1) and the OA's Chief Counsel.

1203.204 Treatment of violations.

The COCO shall afford the contractor (and the contracting officer if he/she is suspected) the opportunity for an informal hearing. Government legal counsel should be consulted regarding appropriate hearing procedures.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except suspected antitrust violation shall be reported through legal counsel in accordance with (FAR) 48 CFR 3.303.

Subpart 1203.4—Contingent Fees

1203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for misrepresentation or violations of the covenant against contingent fees.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

1203.502–2 General.

(g) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for subcontractor kickbacks.

Subpart 1203.8—Limitation on the Payment of Funds to Influence Federal Transactions

1203.806 Processing suspected violations.

Contracting officers shall report, in accordance with OA procedures, suspected violations of the requirements of 31 U.S.C. 1352 to the Assistant Inspector General for Investigations (JI–1), 400 Seventh Street, SW., Washington, DC, 20590.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.1—Contract Execution

1204.103 Contract clause.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.
1204.804–1 Closeout by the office administering the contract.
1204.804–5 Detailed procedures closing out contract files.
1204.804–570 Supporting closeout documents.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1204.1—Contract Execution

1204.103 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.204–1, Approval of Contract, filled in as appropriate, in solicitations when approval to award the resulting contract must be obtained from an official at a level above the contracting officer.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

1204.804–1 Closeout by the office administering the contract.

(b) If the contracting officer determines appropriate, the quick closeout procedures under (FAR) 48 CFR 42.708 may be used for the settlement of indirect costs under contracts when the estimated amount (excluding any fixed fee) of the contract is $3 million or less.

1204.804–5 Detailed procedures for closing out contract files.

1204.804–570 Supporting closeout documents.

(a) When applicable (see parenthetical examples in this paragraph) and prior to contract closure, the contracting officer shall obtain the listed DOT and Department of Defense (DOD) forms from the contractor to facilitate contract closeout.

(1) Form DOT F 4220.4, Contractor's Release (e.g., see (FAR) 48 CFR 52.216–7);

(2) Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (e.g., see (FAR) 48 CFR 52.216–7);

(3) Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804–5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts (e.g., see (FAR) 48 CFR 52.227–14).

(b) The forms (see (TAR) 48 CFR part 1253) are used primarily for the closeout of cost-reimbursement, time-and-

materials, and labor-hour contracts. However, the forms may also be used for closeout of other contract types or when necessary to protect the Government's interest.

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.1—Dissemination of Information

1205.101 Methods of disseminating information.

SUBPART 1205.4—RELEASE OF INFORMATION

1205.402 General public.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SUBPART 1205.1—DISSEMINATION OF INFORMATION

1205.101 Methods of disseminating information.

(a)(2) To facilitate public examination of solicitations expected to exceed $10,000, but not expected to exceed the small purchase limitation, COCOs are encouraged to post the notice of the solicitation or a copy of the solicitation in a central location within the contracting office.

(b) DOT publishes a Procurement Forecast of planned procurements each fiscal year, which is available from the DOT Office of Small and Disadvantaged Business Utilization (S–40), 400 Seventh Street SW., Washington, DC, 20590.

Subpart 1205.4—Release of Information

1205.402 General public.

It is DOT policy to furnish to the general public, upon request, the following information on proposed contracts and contract awards:

(a) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms invited to submit sealed bids or proposals;

(b) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms which attended pre-proposal or pre-bid conferences, when held;

(c) After the opening of sealed bids, names of firms which submitted bids; and

(d) After contract award, the names of firms which submitted proposals. Requests for other specific information shall be processed in accordance with the DOT Freedom of Information Act rules and regulations ((TAR) 48 CFR 1224.202).

PART 1206—COMPETITION REQUIREMENTS

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

The DOT Senior Competition Advocate (SCA) is located in the Office of the Assistant Secretary for Administration (M–66). Correspondence may be sent directly to M–66 or via M–60.

PART 1207—ACQUISITION PLANNING

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.
1207.307 Appeals.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

Procedures for DOT's implementation of OMB Circular A–76, Performance of Commercial Activities, and (FAR) 48 CFR 7.3 is under DOT Order 4400.2 series, Performance of Commercial Activities.

1207.307 Appeals.

DOT appeal procedures for informal administrative review of initial cost-comparison results are contained in DOT Order 4400.2 series.

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.406 Debarment.
1209.406–3 Procedures.
1209.407 Suspension.
1209.407–3 Procedures.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1209.5—Organizational and Consultant Conflicts of Interest

1209.507 Solicitation provisions and contract clause.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.406 Debarment.

1209.406–3 Procedures.

(a) *Investigation and referral.* The COCO shall submit a notice of proposed debarment for issuance by the SPE (see (FAR) 48 CFR 9.406–3(c)). Reports and notices shall be coordinated with OA legal counsel prior to submission to the SPE.

(b) *Decisionmaking process.* After receipt of the OA report, the SPE may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the debarment decision.

(c) *Notice of proposal to debar.* The SPE shall provide a copy of the dated, signed notice of proposed debarment to the COCO.

(d) *Debarring official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the SPE may request the DOT Board of Contract Appeals (BCA) to conduct fact finding and provide a report containing the results of the fact finding.

(e) *Notice of debarring official's decision.* The SPE shall notify the COCO prior to deciding whether or not to impose debarment. The COCO shall be furnished the original of the signed SPE decision to include in the contract file. The SPE shall provide a copy of the decision to GSA in accordance with (FAR) 48 CFR 9.404(c).

1209.407 Suspension.

1209.407–3 Procedures.

(a) *Investigation and referral.* The COCO shall submit a notice of proposed suspension for issuance by the SPE (see (FAR) 48 CFR 9.407–3(c)). Reports and notices shall be coordinated with OA legal counsel prior to submission to the SPE.

(b) *Decisionmaking process.* After receipt of the OA report, the SPE may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the suspension decision.

(c) *Notice of suspension.* The SPE shall provide a copy of the dated, signed notice of suspension to the COCO.

(d) *Suspending official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed suspension, the SPE may request the DOTBCA to conduct fact finding and provide a report containing the results of the fact finding. The SPE shall notify the COCO prior to deciding whether or not to suspend. The COCO shall be furnished the original of the signed SPE decision, which shall be included in the contract file. The SPE shall provide a copy of the decision to GSA in accordance with (FAR) 48 CFR 9.404(c).

Subpart 1209.5—Organizational and Consultant Conflicts of Interest

1209.507 Solicitation provisions.

The contracting officer should insert the provision at (TAR) 48 CFR 1252.209–70, "Disclosure of Conflicts of Interest" in all solicitations for negotiated acquisitions, above the small purchase limitation in (FAR) 48 CFR part 13, when the contracting officer believes the conditions under (FAR) 48 CFR 9.507–2 warrant inclusion.

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1210.004 Selecting specifications or descriptions for use.
1210.004–70 Offer evaluation and award, brand name or equal descriptions.
1210.011 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1210.004 Selecting specifications or descriptions for use.

1210.004–70 Offer evaluation and award, brand name or equal descriptions.

(a) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation may be defective and need to be amended or the requirement resolicited.

(b) The contracting officer shall insert in the solicitation an entry substantially as follows for completion by the offeror in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies:

Offering on: _____
Manufacturer's Name: _____
Brand: _____
No.: _____

(c) Except when bid samples are requested for brand name or equal procurements, the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this note:

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision at (TAR) 48 CFR 1252.210–70, Brand Name or Equal).

1210.011 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.210–70, Brand Name or Equal, in solicitations using a brand name or equal purchase description whenever practicable.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.210–71, Index for Specifications, when an index or table of contents may be furnished with the specification.

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1210.011–90 Solicitation provision and contract clause. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1210.011–90 Solicitation provision and contract clause. (USCG)

(a) The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.210–90, Bar Coding Requirement, in solicitations and contracts over the small purchase limitation (also see (TAR) 48 CFR 1213.507–90(a)) when the bar coding of supplies is necessary.

(b) See (TAR) 48 CFR 1213.507–90(b) for a provision required when the USCG clause at (TAR) 48 CFR 1252.210–90, Bar Coding Requirement, is used in small purchases.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1212.3—Priorities and Allocations

1212.302 General.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1212.3—Priorities and Allocations

1212.302 General.

(c) The USCG is the only DOT OA delegated authority under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) to assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services in support of USCG certified national defense related programs.

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1213.5—Purchase Orders

1213.107–90 Solicitation provision. (USCG)
1213.507–90 Clauses. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1213.1—General

1213.107–90 Solicitation provision (supplies). (USCG)

The contracting officer shall insert the USCG provision at (TAR) 48 CFR 1252.213–90, Evaluation Factor for Coast Guard Performance of Bar Coding Requirement, in requests for quotations when the USCG clause at (TAR) 48 CFR 1252.210–90(a), Bar Coding Requirement, is used in small purchases.

Subpart 1213.5—Purchase Orders

1213.507–90 Clauses. (USCG)

(a) The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.210–90, Bar Coding Requirement, in requests for quotations and purchase orders issued by the Inventory Control Points when bar coding of supplies is necessary.

PART 1214—SEALED BIDDING

Subpart 1214.2—Solicitation of Bids

1214.205 Solicitation mailing lists.
1214.205–1 Establishment of lists.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.
1214.303 Modification or withdrawal of bids.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1214.2—Solicitation of Bids

1214.205 Solicitation mailing lists.

1214.205–1 Establishment of lists.

(b) The issuance of a solicitation within a reasonable time (i.e., normally 45 days) after receipt of a SF 129, Solicitation Mailing List Application, constitutes the notification required under (FAR) 48 CFR 14.205–1. If a solicitation is not anticipated for release within a reasonable time after receipt of the SF 129 or if an applicant does not meet the criteria for placement on the list, the contracting officer shall provide a written notification of acceptance or non-acceptance to the applicant within 45 days of application receipt.

(d) Requests for supplemental information shall normally be attached to the SF 129 and forwarded to potential suppliers for completion.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

(b) Contracting officers may permit telegraphic bids to be communicated by means of a telephone call from the telegraph office to the designated office provided that procedures and controls have been established by the COCO for

receiving and safeguarding these incoming bids.

1214.303 Modification or withdrawal of bids.

(b) The receipt required by (FAR) 48 CFR 14.303(b) for withdrawal of a bid in person shall be worded substantially as follows:

I certify as a bona fide agent for or representative of

_____

(Bidder's name and address), I am authorized to withdraw the bid on IFB No. _____ scheduled for opening on _____ and hereby acknowledge receipt of the unopened bid.

_____

(Name and telephone no.)

_____

(Date)

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.1—General Requirements for Negotiation

1215.106 Contract clauses.

SUBPART 1215.4—SOLICITATION AND RECEIPT OF PROPOSALS AND SOLICITATIONS

1215.407 Solicitation provisions.
1215.413 Disclosure and use of information before award.
1215.413–1 Alternate I.
1215.413–2 Alternate II.

SUBPART 1215.6—SOURCE SELECTION

1215.612 Formal source selection.

SUBPART 1215.8—PRICE NEGOTIATION

1215.804 Cost or pricing data.
1215.804–2 Requiring certified cost or pricing data.
1215.804–6 Submission of data.

Subpart 1215.9—Profit

1215.970 Payment of profit or fee under contracts.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1215.1—General Requirements for Negotiation

1215.106 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.215–70, Key Personnel and/or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel and/or facilities.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.407 Solicitation provisions.

(i) The provision at (FAR) 48 CFR 52.215–35, Annual Representations and Certifications—Negotiation, shall be included when applicable.

1215.413 Disclosure and use of information before award.

1215.413–1 Alternate I.

The alternate procedures at (FAR) 48 CFR 15.413–2 shall be used in lieu of the alternate procedures prescribed at (FAR) 48 CFR 15.413–1.

1215.413–2 Alternate II.

(e) The notice at (FAR) 48 CFR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. The cite(s) under the first paragraph of the notice shall be, as a minimum, (TAR) 48 CFR 1215.413–2(f) and the cite of any OA implementing procedures.

(f) Proposals may be released outside of the Government if it is necessary to receive the most competent technical and/or management evaluation available as long as the requirements of (FAR) 48 CFR 15.413–2(f) are met.

Subpart 1215.6—Source Selection

1215.612 Formal source selection.

DOT's formal source selection procedures are contained in TAM (Transportation Acquisition Manual which is stocked by the Government Printing Office), chapter 1215, Appendix A.

Subpart 1215.8—Price Negotiation

1215.804 Cost or pricing data.

1215.804–2 Requiring certified cost or pricing data.

(a)(5) When certified cost or pricing data are not required (e.g., the action is below the thresholds at (FAR) 48 CFR 15.804–2 or adequate price competition is expected to exist), the contracting officer may ask for partial/limited data when it is necessary for the Government's analysis (e.g., cost realism). The contracting officer shall not require this data to be certified.

(b) If, after receipt of proposals, the contracting officer determines that adequate price competition does not exist, the contracting officer shall obtain, as appropriate (see (FAR) 48 CFR 15.804–2), certified cost or pricing data.

1215.804–6 Submission of data.

The contracting officer may require the submission of DOT Form 4220.44, Contract Pricing Summary, when submitting a proposal that requires a SF 1411.

Subpart 1215.9—Profit

1215.970 Payment of profit or fee under contracts.

Profit or fee shall only be paid on definitized contracts and modifications. Any profit or fee earned during the undefinitized period shall be paid once the contract and/or modification, as applicable, is definitized.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.
1216.203–4 Contract clauses.
1216.203–470 Solicitation provision.

Subpart 1216.4—Incentive Contracts

1216.405 Contract clauses.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.
1216.603–4 Contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203–4 Contract clauses.

1216.203–470 Solicitation provision.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

Subpart 1216.4—Incentive Contracts

1216.405 Contract clauses.

(a) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–72, Performance Evaluation Plan, in all cost-plus-award-fee solicitations and contracts.

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–74, Settlement of Letter Contract, in all definitized letter contracts.

Part 1217—Special Contracting Methods

Subpart 1217.1—Multiyear Contracting

1217.102 Policy.
1217.102–1 Uses.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7000 Clauses.

Subpart 1217.71—Energy Savings Performance Contracts

1217.7100 Policy.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1217.1—Multiyear Contracting

1217.102 Policy.

1217.102–1 Uses.

The FAA Administrator has been granted specific statutory multiyear contracting authority by the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Public Law 101–508, Omnibus Budget Reconciliation Act of 1990, Section 9118). FAA implementing procedures are contained in Federal Aviation Acquisition Manual Subchapter 1217.1.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7000 Clauses.

The following clauses are to be used in specific solicitations and contracts:

(a) The clauses set forth in (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74 and (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80 shall be included and clause (TAR) 48 CFR 1252.217–75 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico.

(b) Unless inappropriate, the clauses set forth in (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74 and (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80 should be included and (TAR) 48 CFR 1252.217–75 may be included in negotiated solicitations and contracts to be performed outside the United States.

(c) The clause at (TAR) 48 CFR 1252.217–81, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (TAR) 48 CFR 1252.217–81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (TAR) 48 CFR 1252.217–81, Guarantee.

Subpart 1217.71—Energy Savings Performance Contracts

1217.7100 Policy.

Federal agencies may enter into multi-year contracts for a period of up to 25 years under Title VIII of the National Energy Conservation Policy Act, 42 U.S.C. 8287, as amended. Energy savings performance arrangements are appropriate where a contractor makes improvements and/or operating changes to Federally-owned buildings and facilities to improve energy efficiency, at no cost to the Federal Government. Proposed actions under this section shall be coordinated with M–60.

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1219.2—Policies

1219.201 General policy.

Subpart 1219.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1219.708 Solicitation provisions and contract clauses.

1219.708–70 DOT solicitation and contract clause.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1005 Applicability.

1219.1006 Procedures.

Appendices

Appendix A Targeted Industry Categories

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1219.2—Policies

1219.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (S–40), is responsible for the implementation and execution of the small and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act. HOAs or their designees are responsible for appointing Small and Disadvantaged Business Utilization Specialists within the OAs.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.708 Solicitation provisions and contract clauses.

1219.708–70 DOT solicitation and contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.219–70, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219–9.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1005 Applicability.

(b) *Targeted industry categories.* DOT's targeted industry categories are shown in appendix A of this subpart.

1219.1006 Procedures.

(c) *Emerging small business set-aside.* The SBA published a notice in the **Federal Register**, dated September 13, 1991, that increased the emerging small business reserve amount for Architect-Engineer (A–E) services from $25,000 to $50,000. Therefore, A–E services below $50,000 are reserved for emerging small businesses, if the conditions of (FAR) 48 CFR 19.1006(c)(1) are met.

APPENDIX A

Industry category*	FPDS product and service code	Standard industrial classification code
(1) Engineering Development.	AT94	8748
(2) Systems Engineering Services (Only).	R414	8748
(3) Radio/TV Communication Equipment (except airborne).	5820	3663
(4) Maintenance Engine/Turbine and Maintenance Repair, Rebuilding of Weapons Equipment.	J028/J010	7699
(5) ADP Central Processing Units.		
Analog	7020	3571

APPENDIX A—Continued

Industry category*	FPDS product and service code	Standard industrial classification code
Digital	7021	3571
Hybrid	7022	3571
(6) ADP Support Equipment.	7035	3577
(7) ADP Components	7050	3571
(8) ADP Teleprocessing and Systems Development and Programming Services.	D302/ D305	7371
(9) Gas Turbines and Jet Engines, Aircraft; and Components.	2840	3724
(10) Radar Equipment and Navigation and Navigational Aids R&D.	5840/ AT30	3812

*The industry categories were derived from Federal Procurement Data Product and Services Codes Manual, dated September 1991.

PART 1220—LABOR SURPLUS AREA CONCERNS

Subpart 1220.90—Local Hire

1220.9000 Policy. (USCG)
1220.9001 Solicitation provision and contract clause. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1220.90—Local Hire

1220.9000 Policy. (USCG)

Public Law 101–225, Coast Guard Authorization Act of 1989, Section 206, added Section 666 to Title 14 of the United States Code, which requires the U.S. Coast Guard to include a provision for local hire in each contract for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor). The Secretary of Transportation may waive this requirement in the interest of national security or economic efficiency.

1220.9001 Solicitation provision and contract clause. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.220–90, Local Hire Provision, in all solicitations and contracts as required by (TAR) 48 CFR 1220.9000.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.
1222.101–70 Admittance of union representatives to DOT installations.
1222.101–71 Contract clauses.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.
1222.406–9 Withholding from or suspension of contract payments.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.
1222.608–4 Award pending final determination.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101–70 Admittance of union representatives to DOT installations.

(a) It is the policy of DOT to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DOT labor coordinator (i.e., Director, Office of Economics (P–35), Office of the Secretary) or OA labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

1222.101–71 Contract clauses.

(a) The contracting officer, may, when applicable, insert the clause at (TAR) 48 CFR 1252.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (TAR) 48 CFR 1252.222–71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.

1222.406–9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(1) *Forwarding wage underpayments to the Comptroller General.* The contracting officer shall ensure that a completed Form DOT F 4220.7, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) must receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.

1222.608–4 Award pending final determination.

(b) The official authorized to approve the contracting officer's written certification required by (FAR) 48 CFR 22.608–4(b)(1) is the HCA.

PART 1223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

1223.303 Contract clause.

Subpart 1223.70—Safety Requirements for Selected Dot Contracts

1223.7000 Contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

1223.303 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

(a) Where all or part of a contract will be performed on Government-owned or

leased property, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–71, Accident and Fire Reporting.

(b) For all solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–72, Protection of Human Subjects.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

1224.000 Scope of part.

Subpart 1224.1—Protection of Individual Privacy

1224.102–70 Applicability.

SUBPART 1224.2—FREEDOM OF INFORMATION ACT

1224.202 Policy.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1224.000 Scope of part.

DOT's rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR part 10.

Subpart 1224.1—Protection of Individual Privacy

1224.102–70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act applies and which shall not be released irrespective of whether the Government or a contractor acting on behalf of the Government is maintaining the records include the following:

(1) Personnel, payroll and background records personal to any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applicants for licenses; and

(3) Any other detailed record containing information identifiable with a particular person.

(b) Illustrations of systems of records to which the Privacy Act does not apply include:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal Government; and

(2) The records generated, when contracting with an educational institution, on contract students pursuant to their attendance (e.g., admission forms, grade reports), provided that they are similar to those maintained on other students and are commingled with records of other students.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in 49 CFR part 7. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.

PART 1225—FOREIGN ACQUISITION

Subpart 1225.90—Buy American Act—Steel and Manufactured Products

1225.900 Scope. (FAA)
1225.9001 Definitions. (FAA)
1225.9002 Policy. (FAA)
1225.9003 Order of Precedence. (FAA)
1225.9004 Findings. (FAA)
1225.9005 Solicitation Provisions and Contract Clauses. (FAA)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1225.90 Steel and Manufactured Products. (FAA)

1225.9000 Scope. (FAA)

For the FAA, this subpart implements the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990), and Pub. L. 102–581, The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Title I, Sec. 103 and 104, as these apply to the obligation of funds derived from appropriations through Fiscal Year (FY) 1995.

1225.9001 Definitions. (FAA)

As used in this subpart:

Manufactured product means an item produced as a result of the manufacturing process.

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

1225.9002 Policy. (FAA)

(a) This subpart sets forth the policy for the FAA pursuant to Pub. L. 101–508, and notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated for any project unless steel and manufactured products used in such projects are produced in the United States. Projects funded by the Research, Engineering and Development appropriation are excluded from this provision.

(b) The Act provides that the general provisions in paragraph (a) shall not apply where the Secretary of Transportation finds that:

(1) Their application would be inconsistent with the public interest;

(2) Such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) In the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982, (i) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project, and (ii) final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) There is no restriction against a company offering foreign steel or manufactured products in its bid or proposal. The FAA, however, may not award to that company unless it is pursuant to one of the exceptions listed under the FAA guidance at (TAR) 48 CFR 1225.9002(b).

(d) For the purpose of this subpart, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

1225.9003 Order of precedence. (FAA)

(a) Any acquisition of FAA not subject to Pub. L. 101–508 should be treated as covered under the Buy American Act, unless a Buy American Act exception applies.

(b) Nothing in this subpart relieves the contracting officer of responsibility for complying with the Federal Acquisition Regulation (FAR) 48 CFR subpart 25.1, Buy American Act—Supplies, and (FAR) 48 CFR subpart 25.2, Buy American Act Construction Materials, including the requirement to insert any FAR required Buy American clause or provision in solicitations or contracts. To the extent that there may be a conflict between the requirements of the clause prescribed by this subpart and a FAR prescribed Buy American clause, both of which may be required to be included in the same contract, this subpart's clause takes precedence.

(c) The certificate required to be executed by this subpart, entitled, "Buy American Certificate—Steel and Manufactured Products" ((TAR) 48 CFR

1252.225–90), will be in addition to any Buy American certification required by the FAR. Although this may appear to be a situation of a clear duplication of certifications (two Buy American certificates in the same acquisition) the separate certificates implement two separate statutes, which differ in coverage. Consequently, the contents of the two certificates included in the same acquisition may differ. As one example: such materials as copper or aluminum, if end products in the contract and if nondomestic, would be listed in the FAR Buy American certificate, whereas they would not be listed in the certificate required by this subpart. This is because only steel, among nonmanufactured materials, is subject to the restrictions of Pub. L. 101–508, whereas all nondomestic end products are subject to restrictions of the Buy American Act (unless a Buy American Act exception applies).

1225.9004 Findings. (FAA)

In respect to the four findings enumerated in FAA guidance at (TAR) 48 CFR 1225.9002(b), the following applies:

(a) Based on delegations from the Secretary and the Federal Aviation Administrator, authorities for the making of these findings are established as follows:

(1) Contracts exceeding $1,000,000: Head of the Contracting Activity. For construction contracts, this is for an amount exceeding $100,000.

(2) Contracts below the above dollar thresholds: Contracting officer.

(b) All findings, except those authorized to be made by the contracting officer, shall be coordinated with the Director, Office of Acquisition Policy and Oversight, ACQ–1. Every finding shall be coordinated with the Office of Chief Counsel and the appropriate Program Office.

1225.9005 Solicitation provision and contract clause. (FAA)

(a) If the procurement includes the acquisition of steel or manufactured products, the contracting officer shall insert the FAA provision at (TAR) 48 CFR 1252.225–90, Buy American Certificate—Steel and Manufactured Products (July 1992), in solicitations. Projects funded by the Research, Engineering and Development appropriation to carry out the purpose of Section 302 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1353) are excluded from this requirement. Only those contract actions obligating funds made available in appropriations for FY 1995 or for earlier fiscal years are subject to this requirement.

(b) If the procurement includes the acquisition of steel or manufactured products, the contracting officer shall insert the FAA clause at (TAR) 48 CFR 1252.225–91, Buy American—Steel and Manufactured Products (July 1992) in solicitations and contracts. Projects funded by the Research, Engineering and Development appropriation to carry out the purpose of Section 302 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1353) are excluded from this requirement. Only those contract actions obligating funds made available in appropriations for FY 1995 or for earlier fiscal years are subject to this requirement.

PART 1227—PATENTS, DATA, AND COPYRIGHTS

Subpart 1227.3—Patent Rights Under Government Contracts

1227.305 Administration of patent rights clauses.

1227.305–4 Conveyance of invention rights acquired by the Government.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.305 Administration of patent rights clauses.

1227.305–4 Conveyance of invention rights acquired by the Government.

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106–1 Bonds and bond-related forms.

1228.106–6 Furnishing of information.

1228.106–70 Execution and administration of bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306–70 Contracts for lease of aircraft.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106–1 Bonds and bond-related forms.

(a) SF 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106–1(c), must provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor. Forms other than the SF 25 (e.g., a commercial form) shall not be used by contractors when a performance bond is required.

1228.106–6 Furnishing of information.

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies

shall place the statement "Certified to be a true and correct copy" followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR part 7 ((TAR) 48 CFR 1224.202).

1228.106–70 Execution and administration of bonds.

(a) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(d) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306–70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228–70 through 1252.228–72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500;

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) Section 504 of the Federal Aviation Act of 1958, as amended, provides that no lessor of an aircraft under a bona fide lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (TAR) 48 CFR 1252.228–72 prescribed in paragraph (d)(1) of this section shall be used.

(1) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

Subpart 1228.106—Bonds

1228.9000 Miller Act notification. (USCG)

The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.228–90, Notification of Miller Act Payment Bond Protection, in solicitations and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.2—Contracts With Commercial Organizations

1231.205 Selected costs.

1231.205–32 Precontract costs.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SUBPART 1231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS

1231.205 Selected costs.

1231.205–32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. No DOT employee can authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (TAR) 48 CFR 1252.231–70, Date of Incurrence of Costs, may be inserted in the resultant contract.

PART 1232—CONTRACT FINANCING

Subpart 1232.70—Contract Payments

1232.7002 Invoice and voucher review and approval.

Appendices

Appendix A Instructions for completing the SF 1034.

Appendix B Instructions for completing the SF 1035.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1232.70—Contract Payments

1232.7002 Invoice and voucher review and approval.

(a) Under fixed-price contracts, the contracting officer shall require the contractor to submit an invoice or voucher in order to receive payment under the contract. The invoice or voucher may be on a form or company letterhead as long as it meets the requirements of the Prompt Payment Act as implemented by OMB Circular A–125—Prompt Payment, (FAR) 48 CFR subpart 32.9, and the contract.

(b) Under other than fixed-price contracts, the contracting office shall require the contractor to submit the SF 1034, Public Voucher for Purchases and Services Other Than Personal, and the SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), to request payments. The forms must be completed as required by Appendix A, Instructions for Completing the SF 1034, and Appendix B, Instructions for Completing the SF 1035.

Appendix A—Instructions for Completing the SF 1034

The SF 1034, Public Voucher for Purchases and Services Other Than Personal, shall be completed in accordance with the below instructions. The lettered items correspond to the entries on the form.

Caption on the SF 1034	Data to be inserted in the block
1. U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION.	Name and address of the contracting office which issued the contract.
2. DATE VOUCHER PREPARED	Date voucher submitted to the designated billing office cited under the contract or order.
3. CONTRACT NO. AND DATE	Contract No. and, when applicable, the Order No. and date as shown on the award document.
4. REQUISITION NO. AND DATE	Leave blank or fill-in in accordance with the instructions in the contract.
5. VOUCHER NO.	Start with "1" and number consecutively. A separate series of consecutive numbers must be used beginning with "1" for each contract number or order number (when applicable). Note: Insert the word "FINAL" if this is the last voucher.
6. SCHEDULE NO.; PAID BY; DATE INVOICE RECEIVED; DISCOUNT TERMS; PAYEE'S ACCOUNT NO.; SHIPPED FROM/TO; WEIGHT; GOVERNMENT B/L.	Leave all these blocks blank.
7. PAYEE'S NAME AND ADDRESS	Name and address of contractor as it appears on the contract. If the contract is assigned to a bank, also show "CONTRACT ASSIGNED" below the name and address of the contractor.
8. NUMBER AND DATE OF ORDER	Leave blank. (See 3 above.)
9. DATE OF DELIVERY OR SERVICE	The period for which the incurred costs are being claimed (e.g., month and year; beginning and ending date of services, etc.).
10. ARTICLES OR SERVICES	Insert the following: "For detail, see the total amount of the claim transferred from the attached SF 1035, page X of X." One space below this line, insert the following: "COST REIMBURSABLE-PROVISIONAL PAYMENT."
11. QUANTITY; UNIT PRICE; (COST; PER)	Leave blank.
12. AMOUNT	Insert the total amount claimed from the last page of the SF 1035.
Payee must NOT use the space below.	Do NOT write or type below this line.

Appendix B—Instructions for Completing the SF 1035

The SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), shall be completed in accordance with the below instructions.

1. Use the same basic instructions for the SF 1035 as used for the SF 1034. Ensure that the contract and, if applicable, order number, are shown on each continuation sheet. Use as many sheets as necessary to show the information required by the contract, contracting officer, or cognizant audit agency; however, if more than one sheet of SF 1035 is used, each sheet shall be in numerical sequence.

2. The following items are generally entered below the line with Number and Date of Order; Date of Delivery or Service; Articles or Services; Quantity; Unit Price; and Amount (but do not necessarily tie to these captions).

3. Description of data to be inserted as it applies to the contract or order number.

a. Show, as applicable, the target or estimated costs, target or fixed-fee, and total contract value, as adjusted by any modifications to the contract or order. The FAR permits the contracting officer to withhold a percentage of fixed fee until a reserve is set aside in an amount that is considered necessary to protect the Government's interest.

b. Show the following costs and supporting data (as applicable) to the contract or order:

(1) *Direct Labor.* List each labor category, rate per labor hour, hours worked, and extended total labor dollars per labor category.

(2) *Premium Pay/Overtime.* List each labor category, rate per labor hour, hours worked, and the extended total labor dollars per labor category. Note: Advance written authorization must be received from the contracting officer to work overtime or to pay premium rates; therefore, identify the contracting officer's written authorization to the contractor.

(3) *Fringe Benefits.* If fringe benefits are included in the overhead pool, no entry is required. If the contract allows for a separate fringe benefit pool, cite the formula (rate and base) in effect during the time the costs were incurred. If the contract allows for billing fringe benefits as a direct expense, show the actual fringe benefit costs.

(4) *Materials, Supplies, Equipment.* Show those items normally treated as direct costs. Expendable items need not be itemized and may be grouped into major classifications such as office supplies. However, items valued at $5,000 or more must be itemized. See (FAR) 48 CFR part 45, Government Property, for reporting of property.

(5) *Travel.* List the name and title of traveller, place of travel, and travel dates. If the travel claim is based on the actual costs expended, show the amount for the mode of travel (i.e., airline, private auto, taxi, etc.), lodging, meals, and other incidental expenses separately, on a daily basis. These actual costs must be supported with receipts to substantiate the costs paid. Travel costs for consultants must be shown separately and also supported.

(6) *Other Direct Costs.* Itemize those costs that cannot be placed in categories (1) through (5) above. Categorize these costs to the extent possible.

(7) *Total Direct Costs.* Cite the sum of categories (1) through (6) above.

(8) *Overhead.* Cite the rate, base, and extended amount.

(9) *G&A Expense.* Cite the rate, base, and extended amount.

(10) *Total Costs.* Cite the sum of categories (7) through (9) above.

(11) *Fee.* Cite the rate, base, and extended amount.

(12) *Total Cost and Fee Claimed.* Enter this amount on the SF 1034.

Completion Voucher

The completion (final) voucher is the last voucher to be submitted for incurred, allocable, and allowable costs expended to perform the contract or order. This voucher should include all contract reserves, allowable cost withholdings, balance of fixed fee, etc. However, the amount of the completion voucher when added to the total amount previously paid cannot exceed the total amount of the contract.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.214 Alternative dispute resolution.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

For DOT contracts, the Board of Contract Appeals (BCA) referenced at (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (S–20), 400 7th Street SW, Washington, DC, 20590. The DOTBCA Rules of Procedure are contained in 48 CFR chapter 63, part 6301.

1233.214 Alternative dispute resolution.

(b) The Administrative Dispute Resolution Act (ADRA), Pub. L. 101–552, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA Alternate Dispute Resolution (ADR) procedures are contained in 48 CFR chapter 63, section 6302.30, ADR Methods (Rule 30), which will be distributed to the parties, if ADR procedures are used, and may be obtained from the DOTBCA upon request. ADR procedures may be used when:

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim.

(c) DOT's Dispute Resolution Specialist in accordance with the ADRA is located in the DOT Office of the General Counsel, C–1.

(d) The DOTBCA is designated as the preferred neutral to perform the functions set forth in the Administrative Disputes Resolution Act for DOT operating administrations on a non-reimbursable basis. The BCA may conduct any of the alternative means of dispute resolution set forth in Title 5, U.S.C. Section 581(3), including settlement negotiations under the auspices of a settlement judge, conciliation, facilitation, mediation, fact finding, mini-trials, and arbitration, or any combination of these methods.

PART 1234—MAJOR SYSTEM ACQUISITION

1234.003 Responsibilities.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1234.003 Responsibilities.

DOT's internal procedures for implementing OMB Circular A–109, Major System Acquisitions, is contained in Chapter 1234, Appendix A, of the Transportation Acquisition Manual.

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

1235.003 Policy.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

1235.003 Policy.

(b) *Cost sharing.* DOT cost sharing policies shall be in accordance with (FAR) 48 CFR 16.303, 48 CFR 42.707(a), and OA procedures.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602–1 Selection criteria.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (TAR) 48 CFR 1252.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602–1 Selection criteria.

(a) Appropriate criteria in addition to those under (FAR) 48 CFR 36.602–1(a) may include, but are not limited to, the criteria listed in this section. The extent to which these criteria are used will depend on the size and the complexity of the project. For instance, for small and straight-forward projects, particularly those under the small purchase limitation, the data provided by the SFs 254 and 255 may provide an adequate measure of the firm's experience and qualification required for the project. However, on large and more complex projects, the evaluation criteria should be extended to consider such factors as the firm's suggested design approach, methods, and design ability, such as:

(1) *Capability of the firm to accomplish the work:*

(i) Relevant, recent experience and technical knowledge of key project personnel and key outside consultants;

(ii) Total number of personnel the Architect-Engineer (A–E) firm employs in the technical disciplines required for the proposed work.

(2) *Capacity of the firm to accomplish the work.* In assessing the firm's capacity to accomplish the work in the required time, considerations shall be given to the firm's current workload, total number of ongoing projects, and percentage of completion.

(3) *Design ability and understanding of the requirements:*

(i) Technical approach (planning and design process, overall planning and design philosophy), possible concepts (narrative), special design opportunities, innovative design possibilities (including environmental), and provisions for the handicapped;

(ii) Understanding of, and experience in, energy conservation design:

(A) Approach to maximizing energy conservation;

(B) Project building and equipment systems that would significantly impact energy consumption;

(C) Criteria and engineering considerations to be used in building and equipment design; and

(D) Examples of previously used design techniques and measure of results (in BTUs consumed per square foot or energy costs);

(iii) Proposed project schedule and personnel-loading plan;

(iv) Quality of examples of previous work; and

(v) Major awards and other major recognition the firm or members of the firm have received for design excellence;

(4) *Organization and management:*

(i) Project team organization and key personnel roles and responsibilities;

(ii) Project management procedures such as coordination of design effort among technical disciplines;

(iii) Methods used to control project schedule and construction cost estimates; and

(iv) Quality control procedures.

(5) *Record of past performance:*

(i) Accuracy of construction cost estimates (compared to construction bids received and value of awarded construction contract(s);

(ii) Number, dollar amount and reason for construction change orders, if any; and

(iii) A–E/client relationship (for Government contracts, the above information is available from SF 1421, Performance Evaluation (A–E)).

(b) If a design competition is to be used, written approval by the COCO shall be obtained prior to soliciting proposals.

(c) The following evaluation criteria reflects DOT policy and shall be used in the A–E evaluation process for A–E acquisitions above the small purchase limitation. The criteria shall be evaluated separately from other criteria in terms of bonus or penalty points and added to the basic numerical evaluation rating for a composite rating. For the purposes of calculating bonus or penalty points, paragraphs (c)(1) and (2) of this section may not be double counted.

(1) *Minority Employment*—Percentage of minority employees in all job classifications and pay scales, noting the percentage of minorities in the immediate locality where the work is to be performed (i.e. city, town, county, or township) and the Standard Metropolitan Statistical Area where the work is to be performed.

(2) *Women Employment*—The number of women in all job classifications and pay scales compared to the women that will actually work on the immediate project.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

1237.110 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1237.1—Service Contracting—General

1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.237–70, Qualifications of Employees, in all solicitations and contracts for services which require contract performance at a Government facility.

PART 1237—SERVICE CONTRACTING

Subpart 1237.90—Mortuary Services

1237.9000 Solicitation provisions and contract clauses. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1237.90—Mortuary Services

1237.9000 Solicitation provisions and contract clauses. (USCG)

(a) The contracting officer shall insert the following clauses in solicitations and contracts for mortuary services. However, USCG clauses (TAR) 48 CFR 1252.237–91 and 1252.237–97 shall not be inserted in solicitations and contracts that include port of entry requirements:

(1) (TAR) 48 CFR 1252.237–90, Requirements (JAN 1994);

(2) (TAR) 48 CFR 1252.237–91, Area of Performance (JAN 1994);

(3) (TAR) 48 CFR 1252.237–92, Performance and Delivery (JAN 1994);

(4) (TAR) 48 CFR 1252.237–93, Subcontracting (JAN 1994);

(5) (TAR) 48 CFR 1252.237–94, Termination for Default (JAN 1994);

(6) (TAR) 48 CFR 1252.237–95, Group Interment (JAN 1994);

(7) (TAR) 48 CFR 1252.237–96, Permits (JAN 1994);

(8) (TAR) 48 CFR 1252.237–97, Facility Requirements (JAN 1994); and

(9) (TAR) 48 CFR 1252.237–98, Preparation History (JAN 1994).

(b) The contracting officer shall insert USCG provision (TAR) 48 CFR 1252.237–99, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with Alternate I in negotiated solicitations for mortuary services.

(c) The contracting officer shall insert (FAR) 48 CFR 52.245–4, Government-Furnished Property (Short Form) in solicitations and contracts that include port of entry requirements.

PART 1242—CONTRACT ADMINISTRATION

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.
1242.203–70 Contract clauses.
1242.205 Designation of the paying office.

Subpart 1242.3—Contract Administration Office Functions

1242.302 Contract administration functions.

Subpart 1242.70—Contracting Officer's Technical Representative

1242.7000 Contract clause.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.

(a) Contracting offices may obtain contract administration assistance from the Defense Logistics Agency (DLA), Defense Contract Management Command, Alexandria, VA, when the contracting officer determines that such action is to be in the best interest of DOT.

1242.203–70 Contract clauses.

(a) The contracting officer may use the clause at (TAR) 48 CFR 1252.242–70, Dissemination of Information—Educational Institutions, in lieu of the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in DOT research contracts with educational institutions, except contracts that require the release or coordination of information.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–71, Contractor Testimony, in all solicitations and contracts issued by NHTSA. Other OAs may use the clause as deemed appropriate.

(c) The contracting officer may insert the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in all DOT contracts except contracts that require the release or coordination of information.

1242.205 Designation of the paying office.

(a) The assignment of contract administration to a DLA Contract Administration Office (CAO) by the contracting officer does not affect the designation of the paying office unless a transfer of DOT funds to the agency of the CAO is effected, and the funds are converted to the agency's account for payment purposes.

(b) When the contracting officer proposes to delegate the contract payment function to another agency (e.g., DLA), the contracting officer shall discuss the transfer of funds procedures with the OA cognizant payment office.

Subpart 1242.3—Contract Administration Office

1242.302 Contract administration functions.

(a)(13) The CAO, or the contracting officer's designee under fixed price contracts, shall review and approve the contractor's invoice for payment. The CAO shall review and approve contractors' vouchers under cost-reimbursement contracts, and this function cannot be delegated to a COTR. All payments to contractors will be made by the payment office designated in the contract to make payments.

Subpart 1242.70—Contracting Officer's Technical Representative

1242.7000 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–73, Contracting Officer's Technical

Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.505 Records and reports of Government property.
1245.505–14 Reports of Government property.
1245.505–70 Solicitation provisions and contract clauses.
1245.508–2 Reporting results of inventories.
1245.508–3 Quantitative and monetary control.
1245.511 Audit of property control system.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.505 Records and reports of Government property.

1245.505–14 Reports of Government property.

When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505–14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on Form DOT F 4220.43, Contractor Report of Government Property.

1245.505–70 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.245–70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

1245.508–2 Reporting results of inventories.

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized: (1) land and rights therein; (2) other real property; (3) plant equipment; (4) special test equipment; and (5) special tooling;

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident; and

(d) Any discrepancies between the physical inventory and the contractor's record of Government property.

1245.508–3 Quantitative and monetary control.

Contracting officers shall require the contractor to provide the quantity and unit cost of each item of Government property reported under (TAR) 48 CFR 1245.508–2(b) and (c).

1245.511 Audit of property control system.

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

(1) Failure of the contractor to acknowledge receipt of GFP;

(2) Failure of the contractor to submit the annual property reports required by (TAR) 48 CFR 1245.505–14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies must be corrected.

PART 1246—QUALITY ASSURANCE

Subpart 1246.7—Warranties

1246.701 Definitions.
1246.701–70 Additional definitions.
1246.703 Criteria for use of warranties.
1246.705 Limitations.
1246.706 Warranty terms and conditions.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1246.7—Warranties

1246.701 Definitions.

1246.701–70 Additional definitions.

At no additional cost to the Government, means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Design and manufacturing requirements means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

Major system means a system or major subsystem used directly by DOT to carry out its mission(s), as defined by TAM (Transportation Acquisition Manual which is stocked by the Government Printing Office) Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, see Coast Guard guidance at (TAR) 48 CFR 1246.701–90). The term does not include: (a) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or (b) commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR 15.804–3(c).

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

1246.703 Criteria for use of warranties.

(a) *Major Systems:* The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (TAR) 48 CFR 1246.792). Other OAs may use the procedures in USCG guidance at (TAR) 48 CFR 1246 and this part as a guideline for major systems acquisitions.

(b) *Other Systems:* (1) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by (FAR) 48 CFR 46.703.

(2) Contracting officers should negotiate a warranty that meets or exceeds the requirements of (TAR) 48 CFR 1246.706 when it is advantageous.

1246.705 Limitations.

(a) The following restrictions are applicable to DOT contracts:

(1) The USCG is the only DOT OA which is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major systems acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as

indicated in the USCG guidance at (TAR) 48 CFR 1246.790–3.

(3) Any warranty obtained shall specifically exclude coverage of combat damage.

1246.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition, any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

PART 1246—QUALITY ASSURANCE

Subpart 1246.7—Warranties

1246.701 Definitions. (USCG)
1246.701–90 Additional USCG definitions. (USCG)
1246.790 Use of warranties in major system acquisitions by the USCG. (USCG)
1246.790–1 Policy. (USCG)
1246.790–2 Tailoring warranty terms and conditions. (USCG)
1246.790–3 Warranties on Government-furnished property. (USCG)
1246.791 Cost benefit analysis. (USCG)
1246.792 Waiver and notification procedures. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1246.7—Warranties

1246.701 Definitions. (USCG)

1246.701–90 Additional USCG definitions. (USCG)

For the USCG, in accordance with Public Law 99–190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is $10 million.

1246.790 Use of warranties in major systems acquisitions by the USCG. (USCG)

This subpart sets forth the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

1246.790–1 Policy. (USCG)

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (TAR) 48 CFR 1246.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

1246.790–2 Tailoring warranty terms and conditions. (USCG)

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

1246.790–3 Warranties on Government-furnished property. (USCG)

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (TAR) 48 CFR 1246.790–1 on any property furnished to that contractor by the Government except for: (a) defects in installation; and (b) installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

1246.791 Cost benefit analysis. (USCG)

Warranties shall be obtained for a major systems acquisition only when it is cost beneficial in accordance with TAM (Transportation Acquisition Manual which is stocked at the Government Printing Office) 1246.703(c). If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with the USCG guidance at (TAR) 48 CFR 1246.792.

1246.792 Waiver and notification procedures. (USCG)

(a) The Secretary of Transportation, without delegation, may waive the requirement for a warranty for USCG major systems acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, at a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the Office of Acquisition and Grant Management (M–60). The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

PART 1247—TRANSPORTATION

Subpart 1247.1—General

1247.104–370 Contract clause.

Subpart 1247.3—Transportation in Supply Contracts

1247.305 Solicitation provisions, contract clauses, and transportation factors.
1247.305–70 Solicitation provisions.
1247.305–71 Contract clause.

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1247.1—General

1247.104–370 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247–1, Acceptable Service at Reduced Rates, to implement the requirements of (FAR) 48 CFR 47.104–3.

Subpart 1247.3—Transportation in Supply Contracts

1247.305 Solicitation provisions, contract clauses, and transportation factors.

1247.305–70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) 1252.247–2, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(b);

(b) 1252.247–3, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(e);

(c) 1252.247–4, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–4(b);

(d) 1252.247–5, Shipments to Ports and Air Terminals, with Alternates I, II, and III, shall be inserted in accordance with (FAR) 48 CFR 47.305–6(a)(1) through (a)(4);

(e) 1252.247–6, F.o.b. Designated Air Carrier's Terminal, Point of Exportation, implements the requirements of (FAR) 48 CFR 47.305–6(a)(5); and

(f) 1252.247–7, Nomination of Additional Ports, implements the requirements of (FAR) 48 CFR 47.305–6(d).

1247.305–71 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247–8, Supply Movement in the Defense Transportation System, in contracts to implement the requirements of (FAR) 48 CFR 47.305–6(f)(1).

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

(d) Reports concerning cargo preference shipments/ocean shipments (see (FAR) 48 CFR 47.506(d)) shall, as a minimum, contain the information and follow the procedures within subparagraph (c) of (FAR) 48 CFR 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using part 1252.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209–70 Disclosure of Conflicts of Interest.
1252.210–70 Brand Name or Equal.
1252.210–71 Index for Specifications.
1252.215–70 Key Personnel and/or Facilities.
1252.216–70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.
1252.216–71 Determination of Award Fee.
1252.216–72 Performance Evaluation Plan.
1252.216–73 Distribution of Award Fee.
1252.216–74 Settlement of Letter Contract.
1252.217–71 Delivery and Shifting of Vessel.
1252.217–72 Performance.
1252.217–73 Inspection and Manner of Doing Work.
1252.217–74 Subcontracts.
1252.217–75 Lay Days.
1252.217–76 Liability and Insurance.
1252.217–77 Title.
1252.217–78 Discharge of Liens.
1252.217–79 Delays.
1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.
1252.217–81 Guarantee.
1252.219–70 Small Business and Small Disadvantaged Business Subcontracting Reporting
1252.222–70 Strikes or Picketing Affecting Timely Completion of the Contract Work.
1252.222–71 Strikes or Picketing Affecting Access to a DOT Facility.
1252.223–70 Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits.
1252.223–71 Accident and Fire Reporting.
1252.223–72 Protection of Human Subjects.
1252.228–70 Loss of or Damage to Leased Aircraft.
1252.228–71 Fair Market Value of Aircraft.
1252.228–72 Risk and Indemnities.
1252.231–70 Date of Incurrence of Costs.
1252.236–70 Special Precautions for Work at Operating Airports.
1252.237–70 Qualifications of Employees.
1252.242–70 Dissemination of Information—Educational Institutions.
1252.242–71 Contractor Testimony.

1252.242–72 Dissemination of Contract Information.
1252.242–73 Contracting Officer's Technical Representative.
1252.245–70 Government Property Reports.
1252.247–1 Acceptable Service at Reduced Rates.
1252.247–2 F.o.b. Origin Information.
1252.247–3 F.o.b. Origin Only.
1252.247–4 F.o.b. Destination Only.
1252.247–5 Shipments to Ports and Air Terminals.
1252.247–6 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.
1252.247–7 Nomination of Additional Ports.
1252.247–8 Supply Movement in the Defense Transportation System.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using part 1252.

(b) *Numbering.*

(2)(i) *Provisions or clauses that supplement the FAR.*

(A) Agency-prescribed provisions and clauses permitted by TAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the TAR. OAs desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to M–60 in accordance with (TAR) 48 CFR 1201.304 for possible inclusion in the TAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OA. This authority is permitted subject to: (*1*) evidence of legal counsel review in the contract file; (*2*) inserting these clauses in the appropriate sections of the uniform contract format; and (*3*) ensuring the provisions and clauses do not deviate from the requirements of the FAR and TAR.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209–70 Disclosure of conflicts of interest.

As prescribed in 1209.507, insert the following provision:

Disclosure of Conflicts of Interest (Jan 1994)

It is the Department of Transportation's (DOT) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

(End of provision)

1252.210–70 Brand name or equal.

As prescribed in (TAR) 48 CFR 1210.011, insert the following provision:

Brand Name or Equal (Jan 1994)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Offers offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristic requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, its offer shall be considered as offering the brand name product referenced in the solicitation.

(c) If the offeror proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting office.

Caution to Offerors: The contracting office is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (1) determine whether the product offered meets the salient characteristic requirements of the solicitation; and (2) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(d) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (1) include in its offer a clear description of such proposed modifications; and (2) clearly mark any descriptive material to show the proposed modifications.

(e) Modifications to make a product conform to a brand name product referenced in the solicitation and proposed after the time for receipt of offers, will not be considered.

(End of provision)

1252.210–71 Index for specifications.

As prescribed in (TAR) 48 CFR 1210.011, insert the following clause:

Index for Specifications (Jan 1994)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.215–70 Key personnel and/or facilities.

As prescribed in (TAR) 48 CFR 1215.106, insert the following clause:

Key Personnel and/or Facilities (Jan 1994)

(a) The personnel and/or facilities as specified below are considered essential to the work being performed hereunder and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel and/or facilities, as appropriate.

(b) Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify, in writing, and receive consent from, the Contracting Officer reasonably in advance of the action and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(c) No diversion shall be made by the Contractor without the written consent of the Contracting Officer. The Contracting Officer may ratify, in writing, the change and such ratification shall constitute the consent of the Contracting Officer required by this clause.

The Key Personnel and/or Facilities under this Contract:

(specify key personnel and/or facilities)

(End of clause)

1252.216–70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (TAR) 48 CFR 1216.203–470, insert the following provision:

Evaluation of Offers Subject to an Economic Price Adjustment Clause (Jan 1994)

Offers shall be evaluated without an amount for an economic price adjustment being added. Offers will be rejected which: (1) increase the ceiling stipulated; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

1252.216–71 Determination of award fee.

As prescribed in (TAR) 48 CFR 1216.405(a), insert the following clause:

Determination of Award Fee (Jan 1994)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of the award fee earned will be made by the Government Fee Determination Official (FDO) and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of contractor performance shall be in accordance with a Performance Evaluation Plan and that the contractor shall be promptly advised in writing of the determination and reasons why the award fee was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for the determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within _____ (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

(c) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that event, the distribution of award fee shall be adjusted to reflect such allocations.

(End of clause)

1252.216–72 Performance evaluation plan.

As prescribed in (TAR) 48 CFR 1216.405(b), insert the following clause:

Performance Evaluation Plan (Jan 1994)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor _____ (insert number) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor _____ (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216–73 Distribution of award fee.

As prescribed in (TAR) 48 CFR 1216.405(c), insert the following clause:

Distribution of Award Fee (Jan 1994)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:
Available Award Fee:
(Insert appropriate information)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

1252.216–74 Settlement of letter contract.

As prescribed in (TAR) 48 CFR 1216.603–4, insert the following clause:

Settlement of Letter Contract (Jan 1994)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____ (insert number) dated _____ (insert effective date). It supersedes the letter contract and its modification number(s) _____ (insert number(s)) and, to the extent of any inconsistencies, governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract _____ (insert number(s) and modification number(s) _____ (insert number(s)). Payment of the agreed upon fee or profit withheld pending definitization of the letter contract, may commence immediately at the rate and times stated within this contract.

(End of clause)

1252.217–71 Delivery and shifting of vessel.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Delivery and Shifting of Vessel (Jan 1994)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway

regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217–72 Performance.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Performance (Jan 1994)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

1252.217–73 Inspection and manner of doing work.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Inspection and Manner of Doing Work (Jan 1994)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

1252.217–74 Subcontracts.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Subcontracts (Jan 1994)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217–75 Lay days.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Lay Days (Jan 1994)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

1252.217–76

Liability and insurance.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Liability and Insurance (Jan 1994)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

1252.217–77 Title.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Title (Jan 1994)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

1252.217–78 Discharge of liens.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Discharge of Liens (Jan 1994)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

1252.217–79 Delays.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Delays (Jan 1994)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at (TAR) 48 CFR 1217.7000 (b) and (c), insert the following clause:

Department of Labor Safety and Health Regulations for Ship Repair (Jan 1994)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

1252.217–81 Guarantee.

As prescribed at (TAR) 48 CFR 1217.7000(d), insert the following clause:

Guarantee (Jan 1994)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

1252.219–70 Small Business and Small Disadvantaged Business subcontracting reporting.

As prescribed in (TAR) 48 CFR 1219.708–70, insert the following clause:

Small Business and Small Disadvantaged Business Subcontracting Reporting (Jan 1994)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form 295 (SF–295)) to the Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization (S–42), 400 7th St., SW, Washington, DC, 20590.

(b) The Contractor shall report the information in Blocks 12, 17 and 18 of the SF–295.

(c) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219.9.

(End of clause)

1252.222–70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (TAR) 48 CFR 1222.101–71(a), insert the following clause:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Jan 1994)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

1252.222–71 Strikes or picketing affecting access to a DOT facility.

As prescribed in (TAR) 48 CFR 1222.101–71(b), insert the following clause:

Strikes or Picketing Affecting Access to a DOT Facility (Jan 1994)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

1252.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Jan 1994)

The Contractor certifies that it has _____ does not have _____ all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it hereby certifies that it will obtain all requisite licenses and permits within _____ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

1252.223–71 Accident and fire reporting.

As prescribed in (TAR) 48 CFR 1223.7000(a), insert the following clause:

Accident and Fire Reporting (Jan 1994)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Federal property, either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal), the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram or facsimile transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223–72 Protection of human subjects.

As prescribed in (TAR) 48 CFR 1223.7000(b), insert the following clause:

Protection of Human Subjects (Jan 1994)

The Contractor shall comply with the National Highway Traffic Safety Administration (NHTSA) principles and procedures (in accordance with NHTSA Order 700–1, 700–3, and 700–4) for the protection of human subjects participating in activities supported directly or indirectly by grants or contracts from NHTSA. A copy of the applicable NHTSA orders shall be provided to offerors and/or contractors upon request. In fulfillment of its assurance:

(a) A committee competent to review projects and activities that involve human subjects shall be established and maintained by the Contractor.

(b) The committee shall be assigned responsibility to determine for each activity planned and conducted that:

(1) The rights and welfare of subjects are adequately protected;

(2) The risks to subjects are outweighed by potential benefits; and

(3) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(c) Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(d) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(e) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participating in an activity shall be provided.

(f) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to NHTSA upon request.

(g) The retention period of such records and materials shall be as specified at (FAR) 48 CFR 4.703.

(h) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(**Note:** If the Contractor has a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700–1, 700–3, and 700–4, that IRB will be considered acceptable for the purposes of this contract.)

(End of clause)

1252.228–70 Loss of or damage to leased aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (Jan 1994)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–71, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) credited to the Government in determining the amount of the Government's liability; or

(2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor

against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228–71 Fair market value of aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (c), insert the following clause:

Fair Market Value of Aircraft (Jan 1994)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $_____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

1252.228–72 Risk and indemnities.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (d), insert the following clause:

Risk and Indemnities (Jan 1994)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.231–70 Date of incurrence of costs.

As prescribed in (TAR) 48 CFR 1231.205–32, insert the following clause:

Date of Incurrence of Costs (Jan 1994)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1252.236–70 Special precautions for work at operating airports.

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

Special Precautions for Work at Operating Airports (Jan 1994)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237–70 Qualifications of employees.

As prescribed in (TAR) 48 CFR 1237.110, insert the following clause:

Qualifications of Employees (Jan 1994)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I–151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

1252.242–70 Dissemination of information—educational institutions.

As prescribed in (TAR) 48 CFR 1242.203–70(a), insert the following clause:

Dissemination of Information—Educational Institutions (Jan 1994)

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

1252.242–71 Contractor testimony.

As prescribed in (TAR) 48 CFR 1242.203–70(b), insert the following clause:

Contractor Testimony (Jan 1994)

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the Contracting Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the Contracting Officer or required by a judge in a final court order.

(End of clause)

1252.242–72 Dissemination of contract information.

As prescribed in (TAR) 48 CFR 1242.203–70(c), insert the following clause:

Dissemination of Contract Information (Jan 1994)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

1252.242–73 Contracting Officer's Technical Representative.

As prescribed in (TAR) 48 CFR 1242.7000, insert the following clause:

Contracting Officer's Technical Representative (Jan 1994)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

(End of clause)

1252.245–70 Government property reports.

As prescribed in (TAR) 48 CFR 1245.505–70, insert the following clause:

Government Property Reports (Jan 1994)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DOT F 4220.43, Contractor Report of Government Property.

(End of clause)

1252.247–1 Acceptable service at reduced rates.

As prescribed in (TAR) 48 CFR 1247.104–370, insert the following clause:

Acceptable Service at Reduced Rates (Jan 1994)

The Contractor is to use carriers that offer acceptable service at reduced rates, if available, to transport supplies under this contract.

(End of clause)

1252.247–2 F.o.b. origin information.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Origin Information (Jan 1994)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

Alternate I (Jan 1994)

If delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

Alternate II (Jan 1994)

When delivery is "f.o.b. origin, freight allowed," add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

1252.247–3 F.o.b. origin only.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Origin Only (Jan 1994)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

1252.247–4 F.o.b. destination only.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Destination Only (Jan 1994)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

1252.247–5 Shipments to ports and air terminals.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

Shipments to Ports and Air Terminals (Jan 1994)

The Offeror shall furnish the following information with the offer:

(a) A delivery schedule in number of units and/or long or short tons;

(b) Maximum quantities available per shipment; and

(c) Other data appropriate to shipment by air carrier.

(End of provision)

Alternate I (Jan 1994)

When the delivery term is "ex dock, pier or warehouse, port of importation" or "c.& f. destination," substitute the following paragraph (c) for the paragraph (c) of the basic provision:

(c) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

Alternate II (Jan 1994)

When the delivery term is "f.a.s. vessel, port of shipment," "f.o.b. vessel, port of shipment," or "f.o.b. inland carrier, point of exportation," substitute the following paragraphs (c), (d) and (e) for the paragraph (c) of the basic provision:

(c) The quantity that can be made available for loading to vessel per running day of 24 hours (if acquisition involves a commodity to be shipped in bulk);

(d) The minimum leadtime required to make supplies available for loading to vessel; and

(e) The port and pier or other designation and, when applicable, the maximum draft of vessel (in feet) that can be accommodated.

Alternate III (Jan 1994)

When the delivery term is "c.i.f. destination," substitute the following paragraphs (c) and (d) for the paragraph (c) of the basic provision:

(c) The number of containers or units that can be loaded in a car, truck, or other

conveyance of the size normally used (specify type and size) for the commodity; and

(d) The amount and type of marine insurance coverage; e.g., whether the coverage is "With Average" or "Free of Particular Average" and whether it covers any special risks or excludes any of the usual risks associated with the specific commodity involved.

1252.247–6 F.o.b. designated air carrier's terminal, point of exportation.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

F.O.B. Designated Air Carrier's Terminal, Point of Exportation (Jan 1994)

The Offeror shall furnish the following information with the offer:

(a) A delivery schedule in number of units, type of package, and individual weight and dimensions of each package;

(b) Minimum leadtime required to make supplies available for loading into aircraft;

(c) Name of airport and location to which shipment will be delivered; and

(d) Other data appropriate to shipment by air carrier.

(End of provision)

1252.247–7 Nomination of additional ports.

As prescribed in (TAR) 48 CFR 1247.305–70, insert the following provision:

Nomination of Additional Ports (Jan 1994)

(a) Offerors may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to their shipping points; and

(b) These ports will be considered in the evaluation of offers if they possess all requisite capabilities of the listed ports in relation to the supplies being acquired.

(End of provision)

1252.247–8 Supply movement in the defense transportation system.

As prescribed in (TAR) 48 CFR 1247.305–71, insert the following clause:

Supply Movement in the Defense Transportation System (Jan 1994)

(a) The Contractor shall dispatch a Transportation Control Movement Document (TCMD) to the appropriate DOD air or water clearance authority in accordance with MILSTAMP procedures for all shipments consigned to DOD air or water terminal transshipment points; and

(b) An Export Release must be obtained for supplies to be transshipped via a water port of loading to overseas destination, except for shipments for which an Export Release is not required, generally shipments of less than 10,000 pounds, (see paragraph 202024 of the Military Traffic Management Regulation, AR 55–355, NAVSUP 4600.70, MCO 4600.14A, AFM 75–2, DLAR 4500.3).

(End of clause)

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1252.2—Texts of Provisions and Clauses

1252.225–90 Buy American Certificate—Steel and Manufactured Products. (FAA)
1252.225–91 Buy American—Steel and Manufactured Products. (FAA)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1252.2—Texts of Provisions and Clauses

1252.225–90 Buy American Certificate—Steel and Manufactured Products. (FAA)

As prescribed in 1225.9005(a), insert the following provision in solicitations:

Buy American Certificate—Steel and Manufactured Products (Jan 1994)

(a) By submitting a bid/proposal under this solicitation, except for those items listed by the offeror below, the offeror certifies that steel and manufactured products to be used in the project are produced in the United States and that components of unknown origin are considered to have been produced or manufactured outside the United States.

(b) This certification is required in implementation of Section 9129 of the Aviation Safety and Capacity Expansion Act of 1990, (Subtitle B of Title IX of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990).

Product	Country of Origin
_____	_____
_____	_____
_____	_____
_____	_____

(End of provision)

1252.225–91 Buy American—steel and manufactured products. (FAA)

As prescribed in 1225.9005(b), insert the following clause in solicitations and contracts:

Buy American—Steel and Manufactured Products (Jan 1994)

(a) Section 9129 of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990) requires the use of steel and manufactured products produced in the United States when a project such as that covered by this contract receives funding.

(b) The Contractor shall deliver only steel and manufactured products produced in the United States. This requirement shall not apply where the Secretary or his or her designee has found—

(1) that its application would be inconsistent with the public interest;

(2) that such materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982, (i) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components to be delivered under this contract, and (ii) final assembly of the facility or equipment to be delivered under this contract has taken place in the United States; or

(4) that inclusion of domestic material will increase the cost of the overall contract by more than 25 percent.

(c) In calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) This clause takes precedence over the provisions of the FAR 52.225–3, Buy American—Supplies, and the FAR clause 52.225–5, Buy American—Construction Materials, in respect to their applicability to steel and manufactured products.

(End of clause)

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1252.2—Texts of Provisions and Clauses

1252.210–90 Bar coding requirement. (USCG)
1252.213–90 Evaluation factor for Coast Guard performance of bar coding requirement. (USCG)
1252.220–90 Local hire. (USCG)
1252.228–90 Notification of Miller Act payment bond protection. (USCG)
1252.237–90 Requirements. (USCG)
1252.237–91 Area of performance. (USCG)
1252.237–92 Performance and delivery. (USCG)
1252.237–93 Subcontracting. (USCG)
1252.237–94 Termination for default. (USCG)
1252.237–95 Group interment. (USCG)
1252.237–96 Permits. (USCG)
1252.237–97 Facility requirements. (USCG)
1252.237–98 Preparation history. (USCG)
1252.237–99 Award to single offeror. (USCG)

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1252.2—Texts of Provisions and Clauses

1252.210–90 Bar coding requirement. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1210.011–90 and 1213.507–90, insert the following clause:

Bar Coding Requirements (Jan 1994)

Item markings shall include bar coding in accordance with MIL–STD–1189 as clarified below:

(a) The stock number shall be bar coded with no prefixes, dashes, spaces, or suffixes encoded. The contract number, the delivery order, or call order number, when used, shall be bar coded with no spaces or dashes encoded.

(b) Prefixes and suffixes to the stock number may be included in the OCR-A in-the-clear markings, but not in the bar code.

(c) Preferred Bar Code Density (characters per inch as defined in MIL–STD–1189) is "standard," but densities from "standard" to "low" are acceptable.

(d) OCR-A characters do not have to be machine readable.

(e) Bar coding shall be machine readable.

(f) Unless otherwise specified herein, minimum bar code height shall be 0.25 inch (6.4 mm) or 15 percent of the bar code length, whichever is greater.

(g) The preferred position of the OCR-A characters is below the bar codes, but the OCR-A characters may be above the bar codes.

(h) On outer containers contractors shall either:

(1) Encode the stock numbers and contract number in one line of bar code with the stock number appearing first; or

(2) Encode the item stock number and contract number on two labels, with the top label containing the stock number and the lower label containing the contract number.

(i) On unit and intermediate containers, the item stock number in bar code with OCR-A below may be on the same label as the other data (identification markings) required by MIL-STD–129H. However, the bar code stock number shall appear on the top line with OCR-A characters on the second line; the OCR-A characters may include the stock number prefix and suffix, or alternatively, the complete stock number including any prefix and suffix, shall be repeated as part of the identification markings.

(j) Exclusions from bar code markings are:

(1) Multi-packs/consolidation containers (containers with two or more different stock numbers within).

(2) Reusable shipping containers used for multiple/ different stock number applications.

(3) Items consigned to a prime contractor's plant for installation in production.

(End of clause)

1252.213–90 Evaluation factor for Coast Guard performance of bar coding requirement. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1213.107–90, insert the following provision:

Evaluation Factor for Coast Guard Performance of Bar Coding Requirement (Jan 1994)

If a small business cannot provide the bar coding requirement, as indicated elsewhere in the schedule, the contracting officer will apply the following formula to the quoted amounts:

(a) Unit price quoted by small business $_____.

(b) Add unit cost to the USCG to provide bar coding $_____.

(c) Adjusted unit price (add lines a. and b.) $_____.

The line (c) amount will become the amount the contracting officer considered when determining the lowest quoted amount.

(End of provision)

1252.220–90 Local hire. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1220.9001, insert the following clause:

Local Hire (Jan 1994)

The Contractor shall employ, for the purpose of performing this contract in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as defined by the Secretary of Labor), individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. Local Resident means a resident or an individual who commutes daily to that State.

(End of clause)

1252.228–90 Notification of Miller Act payment bond protection. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1228.9000, insert the following clause:

Notification of Miller Act Payment Bond Protection (Jan 1994)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain the surety which has provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

_____

(Name)

_____

(Street Address)

_____

(City, State, Zip Code)

_____

(Contact and Tel. No.)

(End of clause)

1252.237–90 Requirements. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Requirements (Jan 1994)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

_____

_____

_____

_____

(End of clause)

1252.237–91 Area of performance. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Area of Performance (Jan 1994)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

1252.237–92 Performance and delivery. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Performance and Delivery (Jan 1994)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

1252.237–93 Subcontracting. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Subcontracting (Jan 1994)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

1252.237–94 Termination for default. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Termination for Default (Jan 1994)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Transportation in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

1252.237–95 Group interment. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Group Interment (Jan 1994)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

1252.237–96 Permits. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Permits (Jan 1994)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

1252.237–97 Facility requirements. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Facility Requirements (Jan 1994)

(a) The Contractor's building shall have complete facilities for maintaining the highest standards for solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor's preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to obtain the necessary items (e.g. catafalques, structures, trucks, equipment) for religious services.

(d) The Contractor's funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

1252.237–98 Preparation history. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following clause:

Preparation History (Jan. 1994)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

1252.237–99 Award to single offeror. (USCG)

As prescribed in USCG guidance at (TAR) 48 CFR 1237.9000, insert the following provision:

Award to Single Offeror (Jan. 1994)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I (Jan. 1994)

If mortuary services are procured by negotiations, substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

PART 1253—FORMS

Subpart 1253.2—Prescription of Forms

1253.204 Administrative matters.
1253.215 Contracting by negotiation.
1253.215–270 Price negotiation.
1253.222 Application of labor laws to Government acquisitions.
1253.227–70 Conveyance of invention rights acquired by the Government.
1253.245–70 Report of Government property.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.
1253.303–4220.4 Contractor's Release.
1253.303–4220.7 Employee Claim for Wage Restitution.
1253.303–4220.43 Contractor Report of Government Property.
1253.303–4220.44 Contract Pricing Summary.
1253.303–4220.45 Contractor's Assignment of Refunds, Rebates, and Credits.
1253.303–4220.46 Cumulative Claim and Reconciliation Statement.
1253.303–DD882 Report of Inventions and Subcontracts.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1253.2—Prescription of Forms

1253.204 Administrative matters.

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (TAR) 48 CFR 1204.804–570:

(a) *Form DOT F 4220.4, Contractor's Release.* (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.4 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the loose-leaf edition of the TAR.

(b) *Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.45 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the looseleaf edition of the TAR.

(c) *Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement.* (See (TAR) 48 CFR 1204.804–570.) Form

DOT F 4220.46 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the looseleaf edition of the TAR.

(d) *DD Form 882, Report of Inventions and Subcontracts.* (See (TAR) 48 CFR 1204.804–570.) DD Form 882 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the looseleaf edition of the TAR.

1253.215 Contracting by negotiation.

1253.215–270 Price negotiation.

The following form(s) may be used in connection with requirements for obtaining cost or pricing data from offerors or contractors, as prescribed in (TAR) 48 CFR 1215.804–6:

Form DOT F 4220.44, Contract Pricing Summary. (See (TAR) 48 CFR 1215.804–6). Form DOT F 4220.44 is authorized for local reproduction and a copy is furnished for this purpose in TAR part 1253 of the looseleaf edition.

1253.222 Application of labor laws to Government acquisitions.

The following form is prescribed for use in connection with the application of labor laws, as specified in (TAR) 48 CFR 1222.406–9:

Form DOT F 4220.7, Employee Claim for Wage Restitution. (See (TAR) 48 CFR 1222.406–9(c)(1).) Form DOT F 4220.7 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the looseleaf edition of the TAR.

1253.227–70 Conveyance of invention rights acquired by the Government.

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in 1227.305–4:

DD Form 882, Report of Inventions and Subcontracts. (See (TAR) 48 CFR 1227.305–4.) DD Form 882 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the looseleaf edition of the TAR.

1253.245–70 Report of Government property.

The following form is prescribed for use by contractors to report Government property, as specified in (TAR) 48 CFR 1245.505–14:

Form DOT F 4220.43, Contractor Report of Government Property. (See (TAR) 48 CFR 1245.505–14.) Form DOT F 4220.43 is authorized for local reproduction and a copy is furnished for this purpose in part 1253 of the looseleaf edition of the TAR.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.

This subpart contains illustrations of DOT and other agency forms specified by the TAR for use in DOT acquisitions.

BILLING CODE 4910–62–P

TAR MATRIX

Key:

P or C = Provision or Clause
IBR = Is Incorporation By Reference authorized?
UCF = Uniform Contract Format Section, when applicable

R = Required
A = Required-When-Applicable
O = Optional

X = Revision

Principle type and/or purpose of contract:

FP SUP = Fixed-Price Supply
CR SUP = Cost-Reimbursement Supply
FP R&D = Fixed-Price Research & Development
CR R&D = Cost-Reimbursement Research & Development
FP SVC = Fixed-Price Service
CR SVC = Cost Reimbursement Service
FP CON = Fixed-Price Construction
CR CON = Cost Reimbursement Construction
T&M LH = Time & Material/Labor Hours
LMV = Leasing of Motor Vehicles
COM SVC = Communication Services
DDR = Dismantling, Demolition, or Removal of Improvements
A-E = Architect-Engineering
FAC = Facilities
IND DEL = Indefinite Delivery
TRN = Transportation
SP = Small Purchases
UTL SVC = Utility Services

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.209-70 Disclosure of Conflicts of Interest	1209.507	P	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210-70 Brand Name or Equal	1210.011	P	NO	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210-71 Index for Specifications	1210.001-70	C	NO	I	A	A	A				A	A				A		A	A		A	
1252.215-70 Key Personnel and/or Facilities	1215.106	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause	1216.203-470	P	NO	M	A		A		A		A		A	A	A	A	A	A	A	A		A
1252.216-71 Determination of Award Fee	1216.405(a)	C	NO	I		A		A		A		A	A		A	A			A	A		
1252.216-72 Performance Evaluation Plan	1216.405(b)	C	NO	I		A		A		A		A	A		A	A			A	A		
1252.216-73 Distribution of Award Fee	1216.405(c)	C	NO	I		A		A		A		A	A		A	A			A	A		
1252.216-74 Settlement of Letter Contract	1216.603-4	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.217-71 Delivery & Shifting of Vessel	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-72 Performance	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-73 Inspection and Manner of Doing Work	1217.7000(b) and (c)	C	NO	I	A																	

(EXCEL)

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.217-74 Subcontracts	1217.7000(b) and (c)	C	NO	I	A																	
12542.217-75 Lay Days	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-76 Liability and Insurance	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-77 Title	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-78 Discharge of Liens	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-79 Delays	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair	1217.7000(b) and (c)	C	NO	I	A																	
1252.217-81 Guarantee	1217.7000(d)	C	NO	I					A													
1252.219-70 Small Business and Small Disadvantaged Business Subcontracting Report	1219.708-70	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work	1222.101-71(a)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222-71 Strikes or Picketing Affecting Access to a DOT Facility	1222.101-71(b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-70 Removal or Disposal of Hazardous Substances - Applicable Licenses and Permits	1223.303	C	NO	I					A	A	A	A	A			A		A			A	
1252.223-71 Accident and Fire Reporting	1223.7000(a)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-72 Protection of Human Subjects	1223.7000(b)	C	NO	I	A	A	A	A	A	A			A						A		A	
1252.228-70 Loss of or Damage to Leased Aircraft	1228.306-70 (a) and (b)	C	NO	I					A	A			A								A	
1252.228-71 Fair Market Value of Aircraft	1228.306-70 (a) and (c)	C	NO	I					A	A			A								A	
1252.228-72 Risk and Indemnities	1228.306-70 (a) and (d)	C	NO	I					A	A			A								A	

(EXCEL)

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.231-70 Date of Incurrence of Costs	1231.205-32	C	NO	I		A		A		A		A										
1252.236-70 Special Precautions for Work at Operating Airports	1236.570.	C	NO	I							A	A	A			A	A	A			A	A
1252.237-70 Qualifications of Employees	1237.110.	C	NO	I					A	A					A							A
1252.242-70 Dissemination of Information - Educational Institutions	1242.203-70(a)	C	NO	I			A	A														
1252.242-71 Contractor Testimony	1242.203-70(b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242-72 Dissemination of Contract Information	1242.203-70(c)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.242-73 Contracting Officers Technical Representative	1242.7000.	C	NO	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
1252.245-70 Government Property Reports	1245.505-70	C	NO	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
1252.247-1 Acceptable Service at Reduced Rates	1247.104-370	C	NO	I		A				A												
1252.247-2 F.O.B. Origin Information	1247.305-70	P	NO	L	A									A					A		A	
1252.247-3 F.O.B. Origin Only	1247.305-70	P	NO	L	A									A					A		A	
1252.247-4 F.O.B. Destination Only	1247.305-70	P	NO	L	A									A					A		A	
1252.247-5 Shipments to Ports and Air Terminals	1247.305-70	P	NO	L	A									A					A		A	
1252.247-6 F.O.B. Designated Air Carrier's Terminal, Port of Exportation	1247.305-70	P	NO	L	A									A					A		A	
1252.247-7 Nomination of Additional Ports	1247.305-70	P	NO	L	A									A					A		A	
1252.247-8 Supply Movement in the Defense Transportation System	1247.305-71	C	NO	F	A									A					A		A	

(EXCEL)

TAR MATRIX-CONT.

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
FAA 1252.225-90 Buy American Certificate-Steel and Manufactured Products	FAA 1225.9005	P	NO	I	A	A	A	A			A	A						A				
FAA 1252.225-91 Buy American Steel and Manufactured Products	FAA 1225.9005	C	NO	I	A	A	A	A			A	A						A				
USCG 1252.210-90 Bar Coding Requirement	USCG 1210.011-90 & 1213.507-90	C	NO	I	A	A													A		A	
USCG 1252.213-90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement	USCG 1213.107-90	P	NO	M																	A	
USCG 1252.220-90 Local Hire	USCG 1220.9001	C	NO	I					A	A	A	A			A		A		A			A
USCG 1252.228-90 Notification of Miller Act Payment Bond Protection	USCG 1228.9000.	C	NO	I							A	A										
USCG 1252.237-90 Requirements	USCG 1237.9000.	C	NO	I					A	A									A			
USCG 1252.237-91 Area of Performance	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-92 Performance and Delivery	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-93 Subcontracting	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-94 Termination for Default	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-95 Group Interment	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-96 Permits	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-97 Facility Requirements	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-98 Preparation History	USCG 1237.9000.	C	NO	I					A	A									A		A	
USCG 1252.237-99 Award to Single Offeror	USCG 1237.9000.	P	NO	I					A	A									A		A	

DEPARTMENT OF TRANSPORTATION CONTRACTOR'S RELEASE	OMB Control No. 2105-0517 Expiration Date: 8/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

CONTRACT NO.	CONTRACTOR (Name and Address)
_____	_____ _____ _____
SUM OF	DOLLARS
_____ _____	_____

In consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or his assignees, the Contractor, upon payment of the said by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESSES WHEREOF, this release has been executed this _____ day of _____, 19____.

WITNESSES

_____
(Contractor)

_____ BY _____

_____ TITLE _____

NOTE: In the case of a corporation, witnesses are not required but the certification below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

Form DOT F 4220.4 (REV. 1/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

DEPARTMENT OF TRANSPORTATION EMPLOYEE CLAIM FOR WAGE RESTITUTION	OMB Control No. 2105-0517 Expiration Date: 9/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

TO: The General Accounting Office Claims Division Washington, DC 20548	CONTRACT NUMBER
	DATE OF CLAIM
	EMPLOYEE'S FULL NAME
	SSN:

I hereby make claim for payment of unpaid wages due me in the amount of $ _____

as an employee of _____
(Name of Contractor and/or Subcontractor)

performing work under the above number at _____
(location of work)

_____. I was employed

as _____ during the period from _____
(job title) *(month/day/year)*

to _____
(month/day/year)

This claim constitutes the total amount claimed due and unpaid for the period of employment indicated.

ADDRESS OF EMPLOYEE	SIGNATURE OF EMPLOYEE

Form DOT F 4220.7 (REV. 1/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

CONTRACTOR REPORT OF GOVERNMENT PROPERTY

OMB Control No. 2105-0517
Expiration Date: 9/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

1. Contract Number: _____

2. Report Period Ending: _____

3. Contractor (Name and Address)	4. Contracting Office (Name and Address)

5. Name and location of Government-Owned, Contractor-Operated Plant (if applicable)

6. Any Government property located at a subcontractor's plant? _____ Yes _____ No. If yes, give the name and address of the subcontractor(s) on an attached sheet to this report.

7. Date contractor's property control system approved? _____

8. Approved by whom? _____
Name of Agency/Office

9 Property Class (See FAR 45.5)	Starting Balance: Total Acquisition Cost (in dollars)	Starting Balance: Total Quantity (in acres or units)	Items Added in $	Items Deleted in $	Ending Balance: Total Acquisition Cost (in dollars)	Ending Balance: Total Quantity (in acres or units)
a. Land & Rights Therein						
b. Other Real Property						
c. Plant Equipment						
d. Special Test Equipment						
e. Special Tooling						
f. Materials in Stock (when total value exceeds $50,000)						

NOTE: This report shall include all Government property (i.e., property furnished by the Government, or acquired or fabricated by the contractor or subcontractors). By signature hereon, the contractor's property administrator certifies that the report was prepared from the contractor's records that are required by FAR 45.5.

10. Typed Name of Contractor Property Administrator	11. Signature and Date

Form DOT F 4220.43 (1/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

PAGE OF PAGES
OMB Control No. 2105-0517 Expiration Date: 9/30/97

CONTRACT PRICING SUMMARY

(For New Contracts Including Letter Contracts)

(See Instructions on Reverse)

This form is for use in support of Standard Form 1411 prescribed by GSA, FAR (48 CFR) 53.215-2(c), Format 7A

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

NAME OF OFFEROR	SUPPLIES AND/OR SERVICES TO BE FURNISHED
HOME OFFICE ADDRESS	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	GOV'T SOLICITATION NO.

DETAIL DESCRIPTION OF COST ELEMENTS

1. DIRECT MATERIAL			EST COST ($)	TOTAL EST COST	REFERENCE
A. PURCHASED PARTS					
B. SUBCONTRACTED ITEMS					
C. OTHER -- (1) RAW MATERIAL					
(2) STANDARD COMMERCIAL ITEMS					
TOTAL DIRECT MATERIAL					
2. MATERIAL OVERHEAD (Rate % X $ base =)					
3. DIRECT LABOR	ESTIMATED HOURS	RATE/ HOUR	EST COST ($)		
TOTAL DIRECT LABOR					
4. LABOR OVERHEAD	O.H. RATE	X BASE =	EST COST ($)		
TOTAL LABOR OVERHEAD					
5. OTHER DIRECT COSTS			EST COST ($)		
A. SPECIAL TOOLING/EQUIPMENT					
TOTAL SPECIAL TOOLING/EQUIPMENT					
B. TRAVEL			EST COST ($)		
(1) TRANSPORTATION					
(2) PER DIEM OR SUBSISTENCE					
TOTAL TRAVEL					
C. INDIVIDUAL CONSULTANT SERVICES			EST COST ($)		
TOTAL INDIVIDUAL CONSULTANT SERVICES					
D. OTHER			EST COST ($)		
TOTAL OTHER					
SUBTOTAL DIRECT COST AND OVERHEAD					
6. GENERAL AND ADMINISTRATIVE (G&A) EXPENSE (RATE % x $ BASE (I.E., COST ELEMENT NOS.) =					
7. ROYALTIES					
8 *SUBTOTAL ESTIMATED COST*					
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY					
10 *SUBTOTAL ESTIMATED COST*					
11. FEE OR PROFIT					
12 *TOTAL ESTIMATED COST AND FEE OR PROFIT*					

Form DOT F 4220.44 (REV. 1/94)(EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

BILLING CODE 4910-62-C

Instructions for Completing Contract Pricing Summary

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. A separate DOT F 4220.44 is required for the basic and each option period (if applicable). The supporting data for the DOT F 4220.44 shall be as follows. (NOTE: The DOT F 4220.44 shall be used to implement the requirements of the SF 1411 and does not relieve offerors from complying with FAR 15.804–6 requirements.)

(a) The basis for all proposed rates (including a copy of the indirect cost pool and a computational trail used to arrive at the proposed rate shall be clearly identified when the proposed rates are not approved by a Government audit agency for use in proposals; or approved by the Government audit agency, but the approval is 12 months or more old. State rather an approved (within 12 months) Government audit agency rate was used.

(b) The information below clarifies FAR 15.804–6 requirements for specific cost elements. The cost elements listed below shall be supported, as a minimum, with the following:

1. DIRECT MATERIAL

A. *Purchased Parts:* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoices prices, etc.). Give details on an attached schedule.

B. *Subcontracted Items:* Show the total cost of subcontract effort and provide a separate SF 1411 and supporting DOT F 4220.44 for each subcontractor or written quotations from the prospective subcontractor in accordance with FAR 15.806–2.

C. *Other.*

(1) *Raw Material:* Consists of material in a form or state that requires further processing. Provide priced quantities of items required for the proposal. Show total cost and give details on an attached schedule.

(2) *Standard Commercial Items:* Consists of items that the offeror normally fabricates, in whole or in part, and that are generally stocked in inventory. Provide an appropriate explanation of the basis for pricing. If price is based on cost, provide a cost breakdown; if priced at other than cost, provide justification for exemption from submission of cost or pricing data, as required by FAR 15.804–3(e). Show total cost and give details on an attached schedule.

2. MATERIAL OVERHEAD

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (item 6).

3. DIRECT LABOR

Show the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Indicate whether actual rates or escalated rates are used. If escalation is included, state the degree (percent) and rationale used.

4. LABOR OVERHEAD

See paragraph (a) above.

5. OTHER DIRECT COSTS

(A) *Special Tooling/Equipment.* Identify and support specific equipment and unit prices. Use a separate schedule if necessary.

(B) *Travel.* Identify and support each trip proposed and the persons (or disciplines) designated to make each trip. Identify and support transportation and per diem rates.

(C) *Individual Consultant Services.* Identify and support the proposed contemplated consultants. State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

(D) *Other Costs.* List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See paragraph (a) above and base approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than $250, provide the following information on a separate page for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers of each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the Contracting Officer, provide a copy of the current license agreement and identification of applicable claims of specific patents. (See FAR 27.204 and 31.205–37)

8. SUBTOTAL ESTIMATED COST

Enter the total of all direct and indirect costs excluding Contract Facilities Capital and Cost of Money and Fee or Profit.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Show total cost on line 9 and attach supporting calculations on the CASB-CMF forms. (See FAR 31.205–10).

10. SUBTOTAL ESTIMATED COST

Enter the total of all proposed costs excluding Fee or Profit and insert this amount in Section 6.A. of SF 1411.

11. FEE OR PROFIT

Enter this proposed Fee or Profit and insert this amount in Section 6.B. of SF 1411.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Enter the total estimated cost including Fee or Profit.

(c) Under the column entitled, "Reference," identify the attachment where information supporting the specific cost element may be found.

BILLING CODE 4910–62–P

CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

OMB Control No.: 2105-0517
Expiration Date: 9/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, _____ (hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over the release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits or other amounts (including any interest thereon) due or which may become due, and to promptly forward to the UNITED STATES TREASURER checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection with; and to permit the Government to represent it at any hearing, trial, or other proceeding arising out out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, _____.

BY: _____
(CONTRACTOR)

CERTIFICATE

I, _____, certify that I am the _____ (official title) of the corporation named as Contractor in the foregoing assignment; that _____ signed said assignment on behalf of the Contractor was then _____ of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

Form DOT F 4220.45 (REV. 1/94) (EXCEL) PREVIOUS EDITION OBSOLETE AUTHORIZED FOR LOCAL REPRODUCTION

CUMULATIVE CLAIM AND RECONCILIATION STATEMENT

OMB Control No. 2105-0517
Expiration Date: 9/30/97

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (2105-0517), Washington, D.C. 20503.

1. Name of Contractor _____
2. Address of Contractor _____

_____

_____

_____

3. Contract No. _____
4. Delivery/Task Order No. _____

5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:

a. Direct Labor..... $ _____
b. Direct Material..... $ _____
c. Other Direct Costs..... $ _____
d. Overhead..... $ _____
e. G&A..... $ _____
f. Subcontract Cost..... $ _____
g. Total Costs (5a through 5f)..... $ _____
h. Fixed Fee..... $ _____
i. Total Amount Claimed..... $ _____

6. Total amount due under the above numbered contract, delivery order, task order is as follows:

a. Total Amount Claimed..... $ _____
b. Total Amount Paid by the Government under Voucher Nos. _____ thru _____ ..... $ _____
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet)..... $ _____
d. Total Amount Due..... $ _____

I, _____, the _____
(Full Name) (Title)

of the above named contractor, certify that the above statements are correct in accordance with the records of the contractor.

_____
(Signature)

BILLING CODE 4910-62-C

REPORT OF INVENTIONS AND SUBCONTRACTS

(Pursuant to "Patent Rights" Contract Clause) (See Instructions on Reverse Side)

Form Approved
OMB NO. 0704-0297
Expires June 30, 1992

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0297), Washington, DC 20503.

1a. NAME OF CONTRACTOR/SUBCONTRACTOR	c. CONTRACT NUMBER	2a. NAME OF GOVERNMENT PRIME CONTRACTOR	c. CONTRACT NUMBER	3. TYPE OF REPORT (X one) ☐ a. INTERIM ☐ b. FINAL
b. ADDRESS (INCLUDE ZIP CODE)	d. AWARD DATE (YYMMDD)	b. ADDRESS (INCLUDE ZIP CODE)	d. AWARD DATE (YYMMDD)	4. REPORTING PERIOD (YYMMDD) a. FROM b. TO

SECTION I - SUBJECT INVENTIONS

5. "SUBJECT INVENTIONS" REQUIRED TO BE REPORTED BY CONTRACTOR/SUBCONTRACTOR (If "None", so state)

a. NAME(S) OF INVENTOR(S) (LAST, FIRST, MI)	b. TITLE OF INVENTION(S)	c. DISCLOSURE NO. PATENT APPLICATION SERIAL NO. OR PATENT NO.	d. ELECTION TO FILE PATENT APPLICATIONS (1) UNITED STATES (a) YES	(b) NO	(2) FOREIGN (a) YES	(b) NO	e. CONFIRMATORY INSTRUMENT OR ASSIGNMENT FORWARDED TO CONTRACTING OFFICER (1) YES	(2) NO

f. EMPLOYER OF INVENTOR(S) NOT EMPLOYED BY CONTRACTOR/SUBCONTRACTOR		g. ELECTED FOREIGN COUNTRIES IN WHICH A PATENT APPLICATION WILL BE FILED	
(1)(a) Name of Inventor (Last, First, MI)	(2)(a) Name of Inventor (Last, First, MI)	(1) Title of Invention	(2) Foreign Countries of Patent Application
(b) Name of Employer	(b) Name of Employer		
(c) Address of Employer (Include ZIP Code)	(c) Address of Employer (Include ZIP Code)		

SECTION II - SUBCONTRACTS (Containing a "Patent Rights" clause)

6. SUBCONTRACTS AWARDED BY CONTRACTOR/SUBCONTRACTOR (If "None", so state)

a. NAME OF SUBCONTRACTOR(S)	b. ADDRESS (Include ZIP Code)	c. SUBCONTRACT NO.(S)	d. DFAR "PATENT RIGHTS" (1) CLAUSE NUMBER	(2) DATE (YYMM)	e. DESCRIPTION OF WORK TO BE PERFORMED UNDER SUBCONTRACT(S)	f. SUBCONTRACT DATES (YYMMDD) (1) AWARD	(2) ESTIMATED COMPLETION

SECTION III - CERTIFICATION

7. CERTIFICATION OF REPORT BY CONTRACTOR/SUBCONTRACTOR *(Not required if ☐ Small Business or ☐ Non-Profit organization.) (X appropriate box)*

a. NAME OF AUTHORIZED CONTRACTOR/SUBCONTRACTOR OFFICIAL (Last, First, MI)	c. I certify that the reporting party has procedures for prompt identification and timely disclosure of "Subject Inventions," that such procedures have been followed and that all "Subject Inventions" have been reported.	
b. TITLE	D. SIGNATURE	E. DATE SIGNED

DD Form 882

Previous editions are obsolete

DD Form 882 Instructions

General

This form is for use in submitting INTERIM and FINAL Invention reports to the Contracting Officer and for use in the prompt notification of the award of subcontracts containing a "Patent Rights" clause. If the form does not afford sufficient space, multiple forms may be used or plain sheets of paper with proper identification of information by Item Number may be attached.

An INTERIM report is due at least every 12 months from the date of contract award and shall include (a) a listing of "Subject Inventions" during the reporting period, (b) a certification of compliance with required invention identification and disclosure procedures together with a certification of reporting of all "Subject Inventions," and (c) any required information not previously reported on subcontracts awarded during the reporting period and containing a "Patent Rights" clause.

A FINAL report is due within 6 months if contractor is a small business firm or domestic nonprofit organization and within 3 months for all others after completion of the contract work and shall include (a) a listing of all "Subject Inventions" required by the contract to be reported, and (b) any required information not previously reported on subcontracts awarded during the course of or under the contract and containing a "Patent Rights" clause.

While the form may be used for simultaneously reporting inventions and subcontracts, it may also be used for reporting, promptly after award, subcontracts containing a "Patent Rights" clause.

Dates shall be entered where indicated in certain items on this form and shall be entered in four or six digit numbers in the order of year and month (YYMM) or year, month and day (YYMMDD). Example: April 1986 should be entered as 8604 and April 15, 1986 should be entered as 860415.

Item 1a. Self-explanatory.

Item 1b. Self-explanatory.

Item 1c. If "same" as Item 2c, so state.

Item 1d. Self-explanatory.

Item 2a. If "same" as Item 1a, so state.

Item 2b. Self-explanatory.

Item 2c. Procurement Instrument Identification (PII) number of contract (DFAR 4.7003).

Item 2d thru 5e. Self-explanatory.

Item 5f. The name and address of the employer of each inventor not employed by the contractor or subcontractor is needed because the Government's rights in a reported invention may not be determined solely by the terms of the "Patent Rights" clause in the contract.

Example 1: If an invention is made by a Government employee assigned to work with a contractor, the Government rights in such an invention will be determined under Executive Order 10096.

Example 2: If an invention is made under a contract by joint inventors and one of the inventors is a Government employee, the Government's rights in such an inventor's interest in the invention will also be determined under Executive Order 10096, except where the contractor is a small business or nonprofit organization, in which case the provisions of Section 202(e) of P.L. 96–517 will apply.

Item 5g(1). Self-explanatory.

Item 5g(2). Self-explanatory with the exception that the contractor or subcontractor shall indicate, if known at the time of this report, whether applications will be filed under either the Patent Cooperation Treaty (PCT) or the European Patent Convention (EPC). If such is known, the letters PCT or EPC shall be entered after each listed country.

Item 6a. Self-explanatory.

Item 6b. Self-explanatory.

Item 6c. Self-explanatory.

Item 6d. Patents Rights Clauses are located in FAR 52.227.

Item 6e thru 7b. Self-explanatory.

Item 7c. Certification not required by small business firms and domestic nonprofit organizations.

[FR Doc. 94–1591 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–62–P–U

Notices

Federal Register
Vol. 59, No. 21
Tuesday, February 1, 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

Adoption of Recommendations and Statement Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States (ACUS) adopted two recommendations its Forty-Ninth Plenary Session. The recommendations concerning improving the environment for agency rulemaking and procedures for regulation of pesticides. The Conference also adopted one formal statement at the Plenary Session on the right of persons to consult with counsel in agency investigations.

FOR FURTHER INFORMATION: Renee Barnow, 202–254–7020.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 591–596. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)). At its Forty-Ninth Plenary Session, held December 9–10, 1993, the Assembly of the Administrative Conference of the United States adopted two recommendations and one formal statement.

Recommendation 93–4, Improving the Environment for Agency Rulemaking, concerns the federal agency rulemaking process, which has become both increasingly less effective and more time-consuming. To improve the environment for agency rulemaking, the Conference recommends specific steps that the President, Congress, and the courts should take to eliminate undue burdens on agency legislative rulemaking.

With regard to presidential oversight, ACUS recommends that presidential oversight and review be reserved for the most important rules and that the agencies be given clear policy guidance in a directive, approved by the President, specifying what is required. In addition, the reviewing or oversight entity should avoid, to the extent possible, extensive delays in the rulemaking process. The review process itself should be open to public scrutiny, following guidelines previously developed by the Administrative Conference. With regard to legislatively-imposed constraints, ACUS recommends that Congress should review and rationalize legislatively-mandated rulemaking procedures, and specific proposals are offered for Congress' consideration. ACUS recommends that courts should be sensitive not to require greater justification for rules than necessary. It also advises that a "reasoned statement" that explains the basis and purpose of the rule and addresses significant issues raised in public comments should be adequate for review. Finally, recognizing that rulemaking is not just a product of external constraints, ACUS recommends a number of steps agency managers can take to improve their internal processes.

Recommendation 93–5, Procedures for Regulation of Pesticides, calls for the adoption of a more coordinated and strategic procedural framework for the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") involving the creation of multiple and reinforcing incentives for regulatory compliance by registrants, for timely and accurate decisionmaking by EPA, and for effective public participation. The Conference recommends that EPA promulgate and communicate clear data standards and guidance on the data expected from registrants. ACUS also recommends that Congress authorize EPA to levy administrative civil money penalties upon registrants submitting data that fail to meet previously announced, clear standards. With regard to suspension and cancellation proceedings, which involve scientific data concerning risks and benefits, ACUS recommends use of informal procedures by which EPA gives registrants detailed reasons for the agency's actions and then provides registrants with sufficient time to file responsive written comments and supporting documentation. However, an opportunity should be provided to allow affected parties to show cause why oral testimony or cross-examination is justified. Among other specific recommendations, ACUS urges Congress to consider giving EPA the authority to use informal procedures to order the phase-down of existing pesticides when there are safer, effective products or practices available.

Statement No. 16, Right to Consult with Counsel in Agency Investigations, addresses the procedures that govern the relationship between a federal agency and persons compelled to appear before the agency in investigations that may lead to civil or criminal prosecution. While addressing certain issues raised in these investigations, the Conference concluded that a uniform set of recommendations concerning agency procedures was not appropriate given the differences among federal agencies in the roles of investigators and the methods by which witnesses or parties appear before agencies.

The full texts of the recommendations and statement are set out in the Appendix below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register**. In past years Conference recommendations and statements of continuing interest were also published in full text in the Code of Federal Regulations (1 CFR parts 305 and 310). Budget constraints have required a suspension of this practice in 1994. However, a complete listing of past recommendations and statements are published in the Code of Federal Regulations. Copies of all past Conference recommendations and statements, and the research reports on which they are based, may be obtained

from the Office of the Chairman of the Administrative Conference. As explained at 1 CFR 304.2, requests for single copies of such documents will be filed at no charge to the extent that supplies on hand permit.

The transcript of the Plenary Session is available for public inspection at the Conference's offices at Suite 500, 2120 L Street NW., Washington, DC.

Dated: January 25, 1994.

Jeffrey S. Lubbers,

Research Director.

Appendix—Recommendations of the Administrative Conference of the United States

The following recommendations were adopted by the Assembly of the Administrative Conference on December 9 and 10, 1993, respectively:

Recommendation 93–4 Improving the Environment for Agency Rulemaking

Informed observers generally agree that the rulemaking process has become both increasingly less effective and more time-consuming. The Administrative Procedure Act does not reflect many of the current realities of rulemaking. The APA's cumbersome "formal rulemaking" procedures are rarely used except in some adjudicative-type rate proceedings. Meanwhile, the APA's simple "informal rulemaking" procedures (set forth in 5 U.S.C. § 553) have been overlain with an increasing number of constraints: Outside constraints imposed by Congress, the President, and the courts, and internal constraints arising from increasingly complex agency management of the rulemaking process.[1] As a result, many federal agencies, faced with unsatisfactory rulemaking accomplishments in recent years, have turned to alternatives such as less formal policy statements or adjudicative orders to achieve regulatory compliance.[2]

The Conference believes that the environment for agency legislative rulemaking can be improved. This recommendation sets out a coordinated framework of proposals aimed at promoting efficient and effective rulemaking by addressing constraints on the current process that derive from a variety of sources. We present an integrated approach for improving the rulemaking environment in order to relieve agencies of unnecessary pressures and disincentives relating to rulemaking. We also identify desirable revisions of section 553 relating to legislative rulemaking. In doing so, this recommendation both presents new proposals and incorporates previous Conference recommendations.

Presidential Constraints

We continue to support presidential coordination of agency policymaking as beneficial and necessary.[3] We are concerned, however, that, unless properly focused, this additional review may impose unnecessary costs. All recent presidents have undertaken some level of review and coordination of agency rulemaking. Presidential review of rules, as undertaken under various executive orders applied by the Office of Management and Budget and other White House entities, has often required agencies to submit nearly all proposed and final rules to a review process in which the rules are screened and analyzed for consistency with presidential objectives. Some of these objectives have been incorporated into analytical requirements found in separate executive orders.[4] This screening process can unduly slow the entire system of rulemaking; it can inhibit the growth of the promising consensus-based alternative of negotiated rulemaking;[5] and it can create undesirable tensions between the reviewing entities and agency policymakers. While these analytical emphases can be rationalized individually, in the aggregate, they can result in redundant requirements, boilerplate-laden documents, circumvention, delays, and clutter in the **Federal Register**. Although specific presidential review policies have varied among Administrations, these recommendations set forth principles that the Conference believes generally should govern presidential review of rules.

We therefore recommend that presidential oversight and review be reserved for the most important rules and that the agencies be given clear policy guidance in a directive, approved by the President, specifying what is required. In addition, the reviewing or oversight entity should avoid, to the extent possible, extensive delays in the rulemaking process. The review process itself should be open to public scrutiny—following guidelines previously developed by the Administrative Conference.[6] The President's policy should encourage planning and coordination of regulatory initiatives, and early dialogue between agencies and the reviewing entity. To this end, the concept of a unified agenda of regulations is a useful tool and should be preserved. We also believe that additional non-APA analytical requirements should be kept to a minimum. The cumulative impact of such requirements on the rulemaking process should be considered before existing requirements are continued or additional ones imposed. We also believe it is useful to periodically reassess the continued viability and relevance of the various presidential directives.[7]

Legislative Constraints

Congress should similarly review and rationalize legislatively-mandated rulemaking procedures. Specifically, we recommend that it refrain, as it generally has done since the 1970s, from imposing program-specific rulemaking requirements that go beyond the APA's basic notice-and-comment procedures.[8] Statutory "on-the-record" and "hybrid" rulemaking provisions that require adjudicative fact-finding techniques such as cross-examination, or more stringent provisions for judicial review (in particular, use of the "substantial evidence" test instead of the normal "arbitrary and capricious" test), can be unnecessarily burdensome or confusing and should be repealed.[9] Although

[1] See generally McGarity, Some Thoughts on "Deossifying" the Rulemaking Process, 41 Duke L. J. 1385 (1991).

[2] See Conference Recommendation 92–2, "Agency Policy Statements," 1 CFR 305.92–2 (1993), which distinguished "legislative" rules, normally promulgated through notice-and-comment procedures, from interpretive rules and policy statements, which are exempt from such procedures. The present recommendation addresses legislative rulemaking.

[3] See Conference Recommendation 88–9, "Presidential Review of Agency Rulemaking" 1 CFR 305.88–9 (1993) (applying Presidential oversight to both executive branch and independent agencies).

[4] Among the mandates reflected in these executive orders are requirements that agency rulemakers include cost-benefit estimates and analyses of the proposed and final rule's impact on federalism, family values, and future litigation, of whether it effects a "regulatory taking," and of other matters. The Conference of course takes no position on the merits of the values underlying these executive orders.

[5] See Conference Recommendations 82–4 and 85–5, "Procedures for Negotiating Proposed Regulations," 1 CFR 305.82–4, 305.85–5 (1993);" Negotiated Rulemaking Act of 1990, 5 U.S.C. 561–69.

[6] See Conference Recommendation 88–9, "Presidential Review of Agency Rulemaking," 1 CFR 305.88–9 (1993) at ¶ 4.

[7] While the most recent executive order of presidential review of rules generally reflects the views set forth in this recommendation, see Executive Order 12866, 58 Fed. Reg. 51735 (1993), the Conference takes no position on the specifics of that order.

[8] See Conference Recommendation 76–3, "Procedures in Addition to Notice and the Opportunity to Comment in Informal Rulemaking," 1 CFR 305.76–3 (1993).

[9] See Conference Recommendation 80–1, "Trade Regulation Rulemaking Under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act," 1 CFR 305.80–1 (1993).

additional procedures can sometimes be beneficial—see, e.g., Section 307 of the Clean Air Act (providing additional safeguards for rulemaking with significant economic and competitive effects)[10]—they should be imposed only after careful review and attention by Congress to possible unintended consequences. Otherwise, such additions generally should be left to the discretion of individual agencies.[11]

Similarly, legislatively-imposed time limits on rulemaking, while understandable, can be unrealistic, resulting in either hastily-imposed rules or missed deadlines that undermine respect for the rulemaking process.[12] Legislative deadlines backed by statutory or regulatory "hammers" (mandating, for example, that the proposed rule or some other policy change[13] automatically take effect upon expiration of the deadline) are particularly undesirable and often counter-productive;[14] they are generally less desirable than the alternative of judicial enforcement of deadlines.[15]

Finally, legislation ancillary to the APA that creates additional rulemaking impediments should be reconsidered. Statutes such as the Regulatory Flexibility Act, which requires a special analysis of virtually all rules' effects on small business, may have laudable intentions, but their requirements are often both too broadly applicable and not sufficiently effective in achieving their goals. If such requirements are imposed, Congress should focus them more narrowly, by, for example, confining their application to significant rules or particular categories of rules.

Judicial Constraints

Other constraints on rulemaking that warrant similar reconsideration have been imposed through judicial review. The APA, in section 706, provides that agency rules may be set aside if they are "arbitrary or capricious," represent an "abuse of discretion," or are "otherwise not in accordance with law." The evolving scope of judicial review of agency rules, along with the timing of much such review at the preenforcement stage, has contributed to what is sometimes an overly intrusive inquiry. This, in turn, has led agencies to take defensive measures against such review. While some tension is an inevitable adjunct of the process of judicial review, we believe that steps can be taken to lessen some of the burdens without loss of effective outside scrutiny of agency rules.

The tendency of some courts to require extra-APA procedures in rulemaking was arrested by the Supreme Court's Vermont Yankee decision in 1978.[16] Nevertheless, while the prevailing judicial interpretation of the arbitrary-and-capricious standard of review (which became known as the "hard look doctrine") has promoted reasoned decisionmaking, courts have not infrequently remanded rules on the basis of an agency's failure to respond adequately to comments, consider relevant factors, or explain fully the bases for its rule. Courts should be sensitive not to require greater justification for rules than necessary; a reasoned statement that explains the basis and purpose of the rule and addresses significant issues raised in public comments should be adequate.

Preenforcement review, expanded by the Supreme Court in the 1967 Abbott Laboratories cases,[17] endorsed by the Conference in various recommendations,[18] and codified in numerous rulemaking programs, has the virtue of settling legal issues early and definitively. When overused, however, preenforcement review can have the negative effect of inducing precautionary challenges to most rules and the raising of as many objections to a rule as possible, including somewhat speculative challenges pertaining to the rule's potential application.

Under the *Abbott Laboratories* standard, challenges to a rule are permitted where issues are appropriate for judicial review and where the impact on a challenger is direct and immediate. The Conference believes that the *Abbott Laboratories* standard strikes a sensible balance, and that preenforcement challenges generally are appropriate where the administrative record provides a sufficient basis for the court to resolve the issues before it. Thus, a preenforcement challenge to a rule based on the procedures used in the rulemaking should normally be permitted. Preenforcement review that involves a facial challenge to a rule's substantive validity (whether because of a conflict with a statute or the Constitution, or because of the inadequacy of the facts or reasoning on which it is based) should also generally be heard.[19] In contrast, challenges to a rule because it might be applied in a particular way should normally be deferred until the rule has actually been applied.

Although prompt resolution of legal issues is to be encouraged, Congress should be cautious in coupling mandated time-limited preenforcement review with preclusion of review at the enforcement stage. Such time-limited review should be provided for only in the situations and conditions specified in Recommendation 82–7.[20] Where Congress does set time limits for preenforcement review, it should, in the interests of consistency, generally specify that preenforcement review should occur within 90 days of a rule's issuance. Current statutory specifications vary. There does not seem to be any reason for variation that outweighs the benefits of uniformity in this context.

Congress should also amend any existing statutes that mandate use of the "substantial evidence" test for reviewing legislative rules, by replacing it with the "arbitrary and capricious" test. The occasional introduction of the substantial evidence test in the rulemaking context has created unnecessary confusion; some courts apply it in a manner identical to that of the "arbitrary and capricious" test; others believe that it sets a higher standard. The Conference believes that the arbitrary and capricious test provides sufficient review in the informal rulemaking context.

The intensity of judicial review directly affects the rulemaking process. For example, the scope of review of agency statutory interpretations is governed by the deferential *Chevron* test, which requires affirmance if the

[10] 42 U.S.C. 7607.

[11] See Conference Recommendation 76–3, "Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking," 1 CFR 305.76–3 (1993).

[12] See Conference Recommendation 78–3, "Time Limits on Agency Action," 1 CFR 305.78–3 (1993).

[13] See, e.g., Conference Recommendation 90–8, "Rulemaking and Policymaking in the Medicaid Program," 1 CFR 305.90–8 (1993).

[14] Where the "hammer" applied because of a failure to meet a deadline is that a proposed rule becomes effective, the anomalous result is that a policy that has withstood no public airing will be implemented.

[15] Courts should continue, where appropriate, to consider whether agency action in a rulemaking is "unreasonably delayed." See 5 U.S.C. 706(1); *Telecommunications Research and Action Center* v. *FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984).

[16] *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978).

[17] *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967); *Toilet Goods Ass'n* v. *Gardner*, 387 U.S. 158 (1967).

[18] See Conference Recommendation 74–4, "Preenforcement Judicial Review of Rules of General Applicability," 1 CFR 305.74–4 (1993); Conference Recommendation 91–5, "Facilitating the Use of Rulemaking by the National Labor Relations Board," 1 CFR 305.91–5 (1993).

[19] A challenge based on the facial invalidity of the rule, in this context, would normally be directed at a requirement or course of action to which the agency has clearly committed itself.

[20] Recommendation 82–7, "Judicial Review of Rules in Enforcement Proceedings," 1 CFR 305.82–7 (1993), sets out criteria for when judicial review should be limited at the enforcement stage, and what kinds of issues should remain reviewable at that stage.

agency's interpretation of an ambiguous statute is permissible.[21] On the other hand, when reviewing the reasonableness of an agency's policy and factual justifications for its rules, courts apply the stricter "hard look" doctrine.[22] Deferential review of the legal issue of statutory interpretation, coupled with the rigorous review of a rule's factual and policy underpinnings that the "hard look" doctrine specifies, has been criticized as anomalous. The Conference believes, however, that the review standards can be harmonized by looking beyond the labels. That is, under both of these doctrines, courts are required to determine independently the limits of the agency's statutory authority and whether the factors the agency took into account in formulating the rule were permissible. Following that determination, courts properly defer to an agency's permissible reading of its statute and to its choice of inferences from the facts in making policy decisions. Courts would help make their review more consistent and predictable if they articulated more clearly this two-step approach. Both the *Chevron* and "hard look" doctrines would then be understood as including a searching review of the range of an agency's legally permissible choices (statutory, policy, and factual), combined with, in each instance, deference to the agency's reasonable selection among such choices, once the alternatives are determined to be within the permissible range.

Finally, in order to prevent additional litigation, courts should be encouraged to address certain issues that arise in many if not most reviews of rules. Reviewing courts should, for example, specify, to the extent feasible, which portions of the rule, if any, are to be set aside, vacated, stayed or otherwise affected by the decision in the case. They should seek to ensure that portions of a rule unaffected by a finding of illegality remain in effect, unless the rule expressly or impliedly indicates that the rule is inseverable. A reviewing court should also consider the extent to which its mandate will apply retroactively. In considering the effect to be given to its decision, the court should weigh the impact of the decision on parties not before the court, and recognize their interest in being heard or adequately represented prior to any ruling that adversely affects them.

[21] *Chevron USA Inc.* v. *NRDC*, 467 U.S. 837 (1984).

[22] *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983) (State Farm).

Amendment of the APA

As we approach the fiftieth anniversary of the APA, some of its rulemaking provisions need to be updated. Section 553(c), which does not now state a length of time for the comment period, should be amended to specify that a comment period of "no fewer than least 30 days" be provided (although a good cause exception for shorter periods should be incorporated). This would relieve agencies of the need to justify comment periods that were 30 days or longer. The thirty-day period is intended as a minimum, not a maximum; agencies would still be encouraged to allow longer comment periods and to leave the record open for the receipt of late comments.[23] Section 553 should also specify that a second round of notice and comment is not required where the final rule is the "logical outgrowth" of the proposed rule, thus codifying generally accepted doctrine.[24] A provision requiring maintenance of a public rulemaking file should be incorporated into section 553, so that those who seek access to the file are not forced to rely on the Freedom of Information Act to obtain it.[25] (The content of such a file is discussed further below in connection with internal agency management initiatives.)

In addition, the requirement in section 553(c) of a statement of basis and purpose for the rule should be revised to require a "reasoned statement" [26] (deleting the "conciseness" provision), which includes a response to significant issues raised in the public comments.[27] These changes are designed to codify the salutary aspects of the caselaw on rulemaking, discourage insubstantial arguments and objections on review, and stem the tendency to require additional, more burdensome justifications.

Another long-overdue change in the Act is elimination of section 553(a)(2)'s exemption from notice-and-comment procedures for matters relating to "public property, loans, grants, benefits, or contracts." As the Conference recognized as early as 1969, this "proprietary exemption" is an anachronism.[28] The exemption for "military or foreign affairs function[s]" in section 553(a)(1) should be narrowed so that all but secret aspects of those functions are open to public comment.[29]

Internal Agency Management Initiatives

Rulemaking is not just a product of external constraints. The agency's own processes for developing rules and reviewing them internally affect the rulemaking environment. Thus, agency management initiatives can have a significant impact on the effectiveness and efficiency of rulemaking. The Conference recommends a number of steps agency managers can take to improve their internal processes.

Senior agency staff should develop management strategies to set priorities and track agency rulemaking initiatives.[30] Agencies should seek to involve the presidential oversight entity in the rulemaking process as early as feasible, in order to reach agreement on the significance of rules in the developmental stage, to provide greater coordination, and to speed final oversight review. Agencies should also review their existing systems for developing and reviewing regulations, to determine where problems and bottlenecks are occurring. They should seek to achieve more rapid internal clearances of proposed and final rules, and to develop reasoned analyses [31] and responses to significant issues raised in public comments. They should also take steps to manage the rulemaking file (and associated requests for access to it).[32]

[23] See Conference Statement #7, "Views of the Administrative Conference on Proposals Pending in Congress to Amend the Informal Rulemaking Provisions of the Administrative Procedure Act," 1 CFR 310.7 (para. 2).

[24] See *South Terminal Corp.* v. *EPA*, 504 F.2d 646, 659 (1st Cir. 1974), in which the 1st Circuit originated the "logical outgrowth" test. It was subsequently embraced by other circuits, particularly the D.C. Circuit. See *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991); *International Union, United Auto, Aerospace and Agr. Implement Workers of America* v. *OSHA*, 938 F.2d 1310 (D.C. Cir. 1991); American Medical Association, 887 F.2d 760 (7th Cir. 1989); *NRDC* v. *USEPA*, 824 F.2d 1258 (1st Cir. 1987); *United Steelworkers* v. *Schuykill Metal Corp.*, 828 F.2d 314 (5th Cir. 1987); *National Black Media Coalition* v. *FCC*, 791 F.2d 1016 (2nd Cir. 1986); *Chocolate Mfrs. Ass'n* v. *Block*, 755 F.2d 1098 (4th Cir. 1985).

[25] Statement #7, supra n. 23, at ¶4.

[26] State Farm, supra n. 22, 463 U.S. at 57 (quoting *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)).

[27] Conference Statement #7, supra n. 23, at ¶5.

[28] See Conference Recommendation 69–8, "Elimination of Certain Exemptions From the APA Rulemaking Requirements," 1 CFR 305.69–8 (1993).

[29] See Conference Recommendation 73–5, "Elimination of the 'Military or Foreign Affairs Function' Exemption from APA Rulemaking Requirements," 1 CFR 305.73–5 (1993).

[30] See Conference Recommendation 87–1, "Priority Setting and Management of Rulemaking by the Occupational Safety and Health Administration," 1 CFR 305.87–1 (1993).

[31] See Conference Recommendation 85–2, "Agency Procedures for Performing Regulatory Analysis of Rules, 1 CFR 305.85–2 (1993); Conference Recommendation 88–7, "Valuation of Human Life in Regulatory Decisionmaking," 1 CFR 305.88–7 (1993).

[32] Computerized access should be made available, preferably in a uniform system government-wide. See Conference Recommendation 88–10, "Federal Agency Use of Computers in Acquiring and Releasing Information," 1 CFR 305.88–5 (1993).

Agencies should also consider innovative methods for developing and getting public input on rules. Agencies should use advisory or negotiated rulemaking committees where appropriate to improve the quality and acceptability of rules.[34] They should also consider the use of "direct final" rulemaking where appropriate to eliminate double review of noncontroversial rules. Direct final rulemaking involves issuing a rule for notice and comment, with an accompanying explanation that if the agency receives no notice during the comment period that any person intends to file an adverse comment, the rule will become effective 30 days (or some longer period) after the comment period closes.

Recommendation

To improve the environment for agency legislative rulemaking, the President, Congress, and the courts should take steps to eliminate undue burdens on agency legislative rulemaking; Congress should update the Administrative Procedure Act's rulemaking provisions; and agencies should review their internal rulemaking environment and, where appropriate, implement internal management initiatives aimed at improving the effectiveness and efficiency of their efforts.

I. Presidential Oversight[35] of Rulemaking

A. The President's program for coordination and review of agency rules should be set forth in a directive that is reviewed periodically. The program should be sensitive to the burdens being imposed on the rulemaking process, and implementation of the program should ensure that it does not unduly delay or constrain rulemaking. The President should consider the cumulative impact of existing analytical requirements on the rulemaking process before continuing these requirements or imposing new ones.[36]

B. The President's directive, as well as the explanations provided and the procedures followed by the presidential oversight entity, should, insofar as practicable:

1. Promote dialogue and coordination between the oversight entity and rulemaking agencies in the early identification and selection of rules warranting application of the review process;

2. Set forth the relevant analytical requirements that the oversight entity should apply to agency rulemaking, and provide interpretive guidance to assist agencies in complying with these requirements;

3. Ensure appropriate expedition and openness in the process, in accordance with Conference Recommendation 88–9;

4. Support a process for planning regulatory initiatives and tracking rule development; and

5. Encourage and support agency efforts to use consensual processes such as negotiated rulemaking.

II. Congressional Structuring of Rulemaking

A. Section 553 of title 5, United States Code, which established the framework for legislative rulemaking, has operated most efficiently when not encumbered by additional procedural requirements. Congress generally should refrain from creating program-specific rulemaking procedures or analytical requirements beyond those required by the APA. When Congress determines that additional procedures beyond those required by section 553 are justified by the nature of a particular program, such procedures should be focused on identified problems and, where possible, adopted incrementally or after experimentation.[37] In addition, Congress should repeal formal ("on-the-record") or other adjudicative fact-finding procedures in rulemaking in any existing statutes mandating such procedures.[38]

B. In general, Congress should not legislate time limits on rulemaking, but should instead rely on judicial enforcement of prompt agency action under § 706(1) of the APA.[39] However, if Congress determines that a deadline is appropriate, it also should ensure that the agency has sufficient resources to support the required rulemaking effort without distorting the agency's other regulatory functions. If Congress further determines that a default rule is necessary where an agency does not meet a deadline, it should specify the terms of that rule and, in particular, should not impose "regulatory hammers" that would cause the agency's proposed rules to take effect automatically.

C. Congress should reconsider the need for continuing statutory analytical requirements that necessitate broadly applicable analyses or action to address narrowly-focused issues.[40] If Congress nonetheless determines that such analytical requirements are necessary, Congress should structure its requirements more narrowly (e.g., by confining their application to the most significant rules or to rules likely to be affected by the stated concern).

III. Timing and Scope of Judicial Review

Congress and the courts generally should be sensitive to the impact of judicial review on agency rulemaking and should seek to simplify, clarify, and harmonize provisions for judicial review of rules.

A. Congress and the Courts

In determining whether preenforcement challenges to rules are appropriate, courts have traditionally evaluated "both the fitness of the issues for judicial decision and the hardship to the parties of withholding its consideration."[41] Adherence to this standard benefits both agencies and those affected by agency rules. Congress

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[33] "Written" includes documents in electronic form.

[34] Any government-wide policy concerning the use of advisory committees should be consistent with their use as part of the process of negotiated rulemaking.

[35] The recommendations contained in this section apply to oversight of both executive and independent agencies. The Conference has previously recommended that presidential review of rulemaking apply to the independent agencies to the same extent it applies to the rulemaking of the Executive Branch departments and agencies. See Conference Recommendation 88–9, "Presidential Review of Agency Rulemaking," 1 CFR 305.88–9 (1993).

The term "presidential oversight entity," as used herein, is that part of the Executive Office of the

we express no position on the substantive policies being mandated.

[37] See, for example, the development of more specific, but not necessarily more burdensome, procedures for EPA rulemaking that has significant economic and competitive effects. See 42 U.S.C. § 7607 (§ 307 of the Clean Air Act). See also Conference Recommendation 76–3, "Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking," 1 CFR 305.76–3 (1993), which encourages agency experimentation with use of oral procedures beyond simple notice and comment in some circumstances.

[38] Conference has recommended against the mandated use of cross-examination and other "adjudicative" procedures for agency fact-finding in rulemaking. See, e.g., Conference Recommendation 79–1, "Hybrid Rulemaking Procedures of the Federal Trade Commission," 1 CFR 305.79–1 (1993). The Conference recognizes, however, that more formal procedures may be appropriate for ratemaking based on party-related facts. See United States v. Florida East Coast RR, 410 U.S. 224 (1973). Congress may also wish to consider whether less formal hybrid processes may be useful in contexts currently requiring formal rulemaking.

[39] This is not a comment on the legitimacy of congressional directives in this regard, but on their impracticality. On the other hand, agency self-imposed deadlines are encouraged, see V(D), below. For more detailed advice on time limits, see paragraph 5 of Conference Recommendation 78–3, "Time Limits on Agency Action," 1 CFR 305.78–3 (1993).

[40] See, e.g., the Regulatory Flexibility Act of 1980. The Conference takes no position on the substantive issues the Act seeks to address. Insofar as possible, however, such concerns are more appropriately included in the President's oversight guidelines. See I(B)(2) above.

[41] *Abbott Laboratories* v. *Gardner*, supra n. 17, 387 U.S. at 149.

generally should authorize and courts should allow preenforcement challenges where the administrative record is a sufficient basis for resolving the issues. Thus, preenforcement challenges to a rule based on the procedures used in the rulemaking or on the asserted substantive invalidity of the rule, however it would be applied, should normally be permitted. Claims of substantive invalidity would include facial challenges based on statutory or constitutional grounds, or asserting the inadequacy of the facts or reasoning underlying the rule. Challenges to a rule on the basis that the rule might be applied in a particular way should normally be deferred until the application seems likely or has occurred.

B. Congress

1. Congress should be cautious in mandating time-limited preenforcement review coupled with preclusion of review at the enforcement stage, and should rely on time limits only in the situations and conditions specified in Recommendation 82–7.[42] Congressional time limits on preenforcement review should be understood to bar later challenges in the enforcement context only to the extent specified by Congress. Where Congress mandates a time limit on preenforcement review, it generally should specify that such review be requested within 90 days of the issuance of the rule.[43] It should also provide that preenforcement review cases be directly reviewable in the courts of appeals, and that a stay or partial stay of the rule's effectiveness ordinarily be issued only on the demonstration of likelihood of success on the merits and the prospect of significant private harm if the rule is permitted to take effect.

2. The standards set out in § 706(2)(A) of the APA's judicial review provisions should apply in all cases involving review of rules. Specifically, Congress should not provide for the use of the "substantial evidence" test for agency rules. It should conform existing statutes to this standard by deleting the use of the "substantial evidence" test for review of agency rules.

C. Courts

1. In articulating the doctrines used in the judicial review of rulemaking, reviewing courts should more clearly harmonize the deferential *Chevron* doctrine, applied in reviewing agency interpretation of its statutory authority, with the "hard look" doctrine, used in examining an agency's justification for its rule. Courts, in applying these doctrines, should recognize that both the Chevron and "hard look" tests call for a searching review of the range of factors or permissible choices that may be considered by the agency, and require deference to agency application of those factors once they are shown to be legally appropriate.

2. When reviewing an agency's explanation for its rule, courts should consider the context of the entire proceeding and concern themselves principally with whether the agency's overall explanation and analysis is reasonable, including its response to the significant issues raised in public comments.

3. In reviewing challenges to agency rules, courts should, to the extent feasible and after taking into account the effect of the decision on affected persons not before the court, consider: (a) Whether any portion of a rule unaffected by a finding of illegality should remain in full force and effect; (b) which portions of the challenged rule, if any, are to be set aside, vacated, stayed, or otherwise affected by the court's decision in a case; and (c) the extent to which the court's mandate should apply retroactively.

4. Courts should continue, where appropriate, to consider whether agency action in a rulemaking is "unreasonably delayed."[44]

IV. Amendments to the APA's Legislative Rulemaking Provisions

Congress should update the APA and eliminate outmoded provisions. It should codify court decisions that have increased the effectiveness of public participation in the rulemaking process. In particular, Congress should consider amending section 553 of the APA to:

A. Eliminate the exemption (§ 553(a)(2)) for rules relating to public property, loans, grants, benefits or contracts, and delete the exemption (§ 553(a)(1)) of military and foreign affairs matters, except for secret matters;[45]

B. Specify a comment period of "no fewer than 30 days" (§ 553(c)),[46] provided that a good cause provision allowing shorter comment periods or no comment period is incorporated, and codify the doctrine holding that a second round of notice and comment is not required if the final rule is a "logical outgrowth" of the noticed proposed rule;

C. Require establishment of a public rulemaking file beginning no later than the date on which an agency publishes an advance notice of proposed rulemaking or notice of proposed rulemaking, whichever is earlier.

D. Restate the "concise" statement of basis and purpose requirement (§ 553(c)) by codifying existing doctrine that a rule must be supported by a "reasoned statement," and that such statement respond to the significant issues raised in public comments.

To the extent permitted by law, agencies should adopt these proposed policies pending Congressional action.

V. Agency Management Initiatives

In order to improve their internal rulemaking environments, agencies should develop management techniques to ensure efficient and effective administration of rulemaking. Such techniques should include:

A. Systematically setting priorities at the highest agency levels and tracking rulemaking initiatives, including identifying clearly who has the authority to ensure that agency schedules and policies are followed;

B. Coordinating with the presidential oversight entity on the identification of rules warranting review as early in the process as is feasible, and establishing internal review procedures at the highest levels to ensure compliance with presidential analytical requirements;

C. Reviewing the agency's existing system for developing and reviewing regulations, to determine where problems and bottlenecks are occurring, and to improve and streamline the process;

D. Achieving timely internal clearances of proposed and final rules, using, where feasible, publicly announced schedules for particular rulemaking proceedings;

E. Managing rulemaking files, so that maximum disclosure to the public is achieved during the comment period and so that a usable and reliable file is available for purposes of judicial review. The rulemaking file should,

[42] See Conference Recommendation 82–7, "Judicial Review of Rules in Enforcement Proceedings," 1 CFR 305.82–7 (1993).

[43] Congress should likewise reevaluate existing statutes for conformity with this approach.

[44] See n. 15, 39, supra.

[45] See Conference Recommendation 69–8, "Elimination of Certain Exemptions From the APA Rulemaking Requirements," 1 CFR 305.69–8 (1993), and Conference Recommendation 73–5, "Elimination of the 'Military or Foreign Affairs Function' Exemption from APA Rulemaking Requirements," 1 CFR 305.73–5 (1993). The latter recommendation urged eliminating the APA's categorical exemption for matters pertaining to the military or foreign affairs function. It does recognize, however, that a modified exemption may be appropriate for matters "specifically required by executive order to be kept secret in the interest of national defense or foreign policy."

[46] The 30-day period is intended as a minimum, not a maximum. Agencies are encouraged to use longer periods for public comment.

insofar as feasible, include (1) all notices pertaining to the rulemaking, (2) copies or an index of all written [47] factual material, studies, and reports substantially relied on or seriously considered by agency personnel in formulating the proposed or final rule (except insofar as disclosure is prohibited by law), (3) all written comments submitted to the agency, and (4) any other material required by statute, executive order, or agency rule to be made public in connection with the rulemaking.[48]

F. Making use, where appropriate, of negotiated rulemaking and advisory committees;

G. Considering innovative methods for reducing the time required to develop final rules without eliminating the opportunity for consideration and comment;

H. Taking steps to ensure that proposed rules are acted on in a reasonably timely manner or withdrawn; and

I. Evaluating and reconsidering existing rules and initiating amendments and repeals where appropriate.

Recommendation 93–5 Procedures for Regulation of Pesticides.

The Environmental Protection Agency cannot accomplish its substantive mission in regulating pesticides without change and improvement in the Agency's regulatory procedures. The Conference recommends the adoption of a more coordinated and strategic procedural framework for the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). EPA needs procedures that create multiple and reinforcing incentives for regulatory compliance by registrants, for timely and accurate decisionmaking by EPA, and for effective public participation.

The Reregistration Process

The reregistration of existing pesticides under contemporary risk assessment standards, and the removal of unacceptable pesticides from the marketplace, are examples where procedures can hinder the agency's prospects for success in its substantive mission. Reregistration of existing pesticides, which Congress originally directed to be completed by 1976, became sufficiently delayed so that Congress in 1988 amended FIFRA specifically to force the completion of reregistration by 1998. Yet subsequent delays in the reregistration process may cause EPA to miss this congressional deadline. To some extent, the delay may reflect the underlying difficulty and resource-intensiveness of the risk assessment enterprise with which EPA has been charged. There are some 50,000 pesticide products that are separately formulated from 642 identified active ingredients. Although EPA has tried to expedite its task by focusing reregistration on some 402 "cases" (composed of single or related active ingredients), each case can require evaluation of 100–150 separate studies, every one of which may pose further questions of scientific protocol and interpretation. It may be that EPA's Office of Pesticide Programs needs more personnel to match its regulatory task.

Whatever the case for additional resources (a question not addressed by the Conference), there is a more basic need for timely and adequate data from registrants—all else in the reregistration process depends on this. Yet the reregistration process does not now provide sufficient procedural incentives to encourage submission of timely and adequate data. In general, because registrants continue to market their products during reregistration, they have little to lose by regulatory decisions that are reached later rather than sooner. Although the 1988 FIFRA Amendments require registrants to identify data gaps, and commit to fill them, the 1988 Amendments do not provide the agency with sufficient tools to police tardy or inadequate data submissions.

As to tardiness, the 1988 Amendments authorized the agency to suspend registrations of those registrants that fail to submit data. But EPA must first provide nonsubmitters with 30-days' notice in response to which registrants can demand a limited hearing (which must be held within 75 days); the 1988 Amendments further provide that registrants suspended for not submitting data can have their registrations "reinstated" upon submission of the data. Some registrants, ironically, have used these suspension procedures as a means of obtaining penalty-free and self-awarded extensions of time. In the 7 months between August 1991 and February 1992, for example, EPA found it necessary to issue 70 Notices of Intent to Suspend for nonsubmittal of data, yet in the majority of these instances (53) the registrants merely submitted their data prior to exhausting their procedural rights and were no worse off for having missed their deadlines. To create an additional disincentive for untimely data submissions it is necessary to make lateness costly to the registrant. To this end, the Conference recommends that Congress authorize EPA to impose civil money penalties for untimely data.

As to the adequacy of data, EPA may now have the theoretical (but untested in court) capacity to suspend or cancel the registration of those pesticides for which inadequate data have been submitted. However, the more common response to inadequate data is a "data call-in," through which the agency demands that studies be redone—a source of additional delay that the agency has identified as significant. Even with respect to its highest priority pesticides, EPA has in the recent past found 50 percent of studies to be either inadequate, "upgradable" or otherwise requiring supplementation. Although the cost of redoing studies should provide some incentive for registrants to ensure that their studies meet EPA's quality criteria, it does not seem to provide a sufficient incentive. In fairness to some registrants, there is evidence that EPA itself may be partially to blame for the high rates of data rejection. In 1992, an internal agency review found that misinterpretation of data requirements and poor guidance from EPA case managers were in part responsible for the inadequacy of data submissions. The Conference therefore recommends that EPA promulgate and communicate clear data standards and guidance on the data expected from registrants. To help prevent the submission of inadequate data even after sufficiently clear agency guidance has been given, the Conference recommends that Congress authorize EPA to levy administrative civil money penalties upon registrants submitting data that fail to meet previously announced standards. This will not only create incentives for registrants to take the extra steps necessary to ensure the adequacy of their submittals, but it will also create incentives for the agency to make clear its expectations.

Whatever the additional tactical advantages that the agency may gain by improving its own ability to enforce data timeliness and adequacy, the sheer number of studies and the innumerable decisions requiring agency discretion suggest that more global incentives are needed to ensure that registrants themselves have a stake in timely and adequate data. The danger is that the reregistration process now has become, even with the best of intentions, an analytical treadmill powered by the rhythms of data call-ins, subsequent requests for data waivers and time extensions, submission of data that do

[47] "Written" includes documents in electronic form.

[48] See Conference Statement #7, 1 CFR 310.7 (1993), "Views of the Administrative Conference on Proposals Pending in Congress to Amend the Informal Rulemaking Provisions of the Administrative Procedure Act."

not always meet EPA's standards for adequacy, and further data call-ins that restart the sequence. The Conference believes that the unique demands of the reregistration process justify congressional consideration of a "hammer" provision that would legislatively impose an automatic suspension of all "List A" pesticides (those high-priority pesticides to which there is greatest human exposure) for which there are still significant data gaps within the registrant's control, and of which the registrant is aware—subject to a provision for a registrant to petition for reinstatement. Such a provision would not only provide an overarching incentive for registrants to favor the completion rather than postponement of their data obligations, but it would also better align the reregistration process with FIFRA's central procedural presumption—that, in the face of uncertainty, applicants (especially those seeking to reregister pesticides with extensive human exposure) should bear the burden of proof in establishing that their pesticides do not pose unreasonable risks.

Suspension and Cancellation Hearings

Apart from improvements in the reregistration process, the Conference urges Congress to substitute a relatively informal decisionmaking process for the formal adjudicatory hearings that registrants can now demand in cancellation and suspension matters. In the past, formal hearings under FIFRA have averaged 1,000 days to complete. These hearings can directly impose on EPA significant resource costs and can also indirectly discourage the agency from aggressive prehearing negotiations with registrants (lest the registrant "take EPA to hearing"). It is not surprising that EPA has long sought alternatives to cancellation hearings. For years, it sought to identify problem pesticides for heightened regulatory attention in a "Special Review" process. There is little need for procedural formality in these types of decisions. At issue in most cancellation and suspension proceedings are scientific data concerning risks and benefits, disputes over which can generally be well-ventilated when EPA gives registrants detailed reasons for the agency's actions and then provides registrants with sufficient time to file responsive written comments and supporting documentation. For those cases where oral testimony or cross-examination is justified, the benefits of more formal procedures can be preserved by providing registrants an opportunity to show cause why such procedures are warranted. Accordingly, the Conference recommends that Congress pattern cancellation and suspension proceedings on a basic notice-and-comment model, with more formal procedures available only if a party will be demonstrably prejudiced by the informal procedure.

Labeling and Phase-down Procedures

Although the reregistration process and adjudicatory hearings are the most visible aspects of pesticide regulation in need of procedural improvement, they are not the only places where procedural reform is important. Since the late 1980's, EPA has in fact sought to reduce the risks of pesticides through private negotiations with registrants over label changes that impose restrictions on use. Such regulatory action has the potential to attain interim risk-reduction quickly when warranted by available data, without going through the cumbersome Special Review and cancellation procedures, even when complete reregistration may still be years away. But there are also disadvantages to relying so heavily on private negotiations with registrants—chief among them the lack of participation among the various interested publics in crafting label changes. In the early 1980's, similar concern about privately negotiated Special Review and pre-Special-Review decisions seriously undermined the agency's credibility and slowed regulatory progress. In 1985, EPA adopted procedures to open the door for information from, and participation by, the public in those processes.[1] The Conference recommends that EPA adopt analogous procedures to regularize and open the agency's negotiated label program. In addition, because label changes are effective in reducing risk only if they are actually implemented in the field, the Conference recommends procedures to facilitate feedback from registrants, pesticide users, and all other interested persons on the effectiveness or ineffectiveness of the interim risk-reduction measures EPA has adopted. Moreover, the Conference recommends that EPA's Office Of Pesticide Programs (OPP) establish regular channels of communication with EPA's Office of Enforcement and Compliance Assurance to inform that office of all label changes and of any material information received by OPP on noncompliance with such changes.

The Conference also urges Congress to consider providing EPA with a new procedural device designed to accommodate a safer pesticides policy: The ability by informal procedures to order the phase-down of existing pesticides when there are available for use safer, effective pest management products or practices.[2] Empowering the agency to develop an informal phase-down mechanism would have several procedural advantages. First, ordering the phase down of an existing pesticide on relative risk grounds will cause less stigmatization of an existing product than would a cancellation proceeding based on the traditional, more absolutist "unreasonable risk" judgment. Second, phase-down procedures provide for an incremental style of decisionmaking in which EPA's reasoned judgments about comparative risk can be tested and reevaluated without making irreversible decisions about existing pesticides in cancellation proceedings. Finally, phase-down procedures based on relative risk can reinforce and integrate EPA's pesticide programs under FIFRA with other federal environmental programs.

Recommendation

I. Adequacy and Timeliness of Data

A. EPA should adopt, whenever possible, rules setting clear standards for pesticide reregistration data and should communicate those standards to registrants.

B. Congress should authorize EPA to impose administrative civil money penalties on registrants for the failure to submit data by any applicable deadline, or for submitting data (even if timely) that do not comply with the data standards adopted by EPA.[3]

C. Congress should consider imposing an automatic suspension of "List A" (high priority) pesticides for which there still remain, by a date to be set by Congress, previously identified and significant gaps in data within the registrant's control, and of which the registrant is on notice. Once suspended, pesticides could be reinstated through a petition process.

II. Informal Procedures

A. Congress should eliminate the provisions in FIFRA allowing for formal adjudicatory hearings in proposed suspension or cancellation actions and should provide instead an informal procedure, including notice in the

[1] 40 CFR Part 154, Subpart B.

[2] Without taking any position on the substantive questions involved in determining the relative safety and effectiveness of pest control measures, the Conference notes EPA's interest in both the present and prior presidential administrations in developing such a substantive capability.

[3] Imposition of penalties should be through formal adjudication. See Conference Recommendation 93–1 "Use of APA Formal Procedures in Civil Money Penalty Proceedings," 58 FR 45409 (Aug. 30, 1993).

Federal Register, that informs registrants and others of the specific grounds on which EPA bases its proposed action and that provides a reasonable opportunity to file written comments and data. Only if a party will be demonstrably prejudiced by the written notice-and-comment process should the agency be required to grant the right to introduce oral testimony or to subpoena and cross-examine witnesses.

B. Congress should consider providing EPA the authority to order a phase down in the use of any registered pesticide through an informal notice-and-comment procedure in which EPA considers such factors as the relative risks and benefits of the pesticide at issue when compared with alternative pest management products and practices.

III. Public Participation

A. EPA should regularize and open for broader public participation its informal procedures for achieving interim risk reduction through pesticide label changes. EPA should inform the public, through a Federal Register notice, when it commences private label negotiations with registrants. EPA should simultaneously open a public "negotiation docket" into which interested persons may submit comments they believe might be relevant, for consideration by EPA and the registrants during their negotiations. If, after negotiations with registrants, EPA proposes a label change, it should publish a notice of the proposed change in the Federal Register and provide the public an opportunity to file written comments. The notice should include a concise, general statement of the proposed label's basis and purpose, including a summary of the material aspects of the agency's negotiations with registrants.

B. After requiring a label change, EPA should establish and publicize the availability of a "compliance docket," for any input about the effectiveness or ineffectiveness of interim risk-reduction measures. In addition, EPA's Office of Pesticide Programs (OPP) should communicate to EPA's Office of Enforcement and Compliance Assurance the adoption by OPP of label changes and any material information received by OPP in its compliance docket.

STATEMENT OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

The following formal statement was adopted by the Assembly of the Administrative Conference on December 9, 1993:

Statement No. 16 Right to Consult With Counsel in Agency Investigations

In recent years, Congress has attached sanctions to an increasingly wide range of regulatory violations, causing federal administrative agencies to become involved more routinely in investigations that lead to civil or criminal prosecution. The Administrative Conference has completed a study that explores the procedures that govern the relationship between the agency and a person compelled to appear before the agency in such investigations.

The Administrative Procedure Act at section 555(b) provides that "[a] person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding." This brief reference to counsel in the APA leaves a number of questions open. The Act, for example, does not specify the types of actions attorneys may take in representing their clients during agency investigative proceedings. It also does not indicate precisely which persons coming in contact with an agency may invoke the right to counsel.[1]

Because the roles of investigators in federal agencies, and the methods by which witnesses or parties appear before agencies vary considerably, the Administrative Conference does not believe it can develop a uniform set of recommendations concerning these procedures. However, the Conference believes it would be valuable to provide a statement on some of the issues raised in such investigations concerning the role of counsel so that those government officials involved can be made aware of the issues and seek additional guidance where warranted.

I. Agency Exclusion of Counsel

Although courts construing the APA's right-to-counsel provision have held that the right includes the power to retain counsel of one's own choosing, some federal agencies have, by rule or order, reserved the power to exclude counsel who represents a person compelled to appear before an agency representative during an investigation. They have done so out of a concern that the particular attorney may impair the effectiveness of the investigation, especially where the attorney represents either multiple witnesses, or a witness and his or her employer.

Agencies should consider whether, in most situations, a person compelled to appear in agency investigative proceedings ought to have the discretion to choose his or her own counsel, even where counsel represents multiple witnesses or parties in the matter. As courts have held, an agency must have "concrete evidence" that an investigation will be impaired before it may exclude counsel.[2] Thus, the mere fact of multiple representation, an employment relationship between the witness and some other party involved in the investigation, or past dealings between the agency and a particular attorney should not be considered, in and of themselves, a sufficient basis for excluding the counsel of a witness.

Regardless of an agency's decision on the above matter, it has the power to exclude counsel for disruptive or obstructionist behavior during the proceedings, and to take action in situations where the attorney is suspected of personal involvement in the potential violations or matters under investigation.

II. Consultation With Auxiliary Experts

Because of the highly technical nature of many regulatory fields, attorneys who advise witnesses or parties in some agency investigations must consult with accountants, engineers, economists, or other experts in order to provide effective legal assistance. The prevailing practice among federal agencies is to allow such consultation with auxiliary personnel, either by allowing the expert to attend the proceedings or by allowing the attorney a reasonable opportunity during the proceeding to consult with the expert about the substance of the investigation. Agencies that do not currently provide this opportunity should consider whether to allow counsel representing a person compelled to appear before the agency reasonable access to auxiliary experts, regardless of whether the investigation involves civil or criminal sanctions.

[1] The 1941 Attorney General's Report on Administrative Procedure in Government Agencies is strangely taciturn on the subject of legal representation. Sen. Doc. No. 8, 77th Cong., 1st Sess. (1941). The report throughout refers to the presentations and contentions of "parties," without any indication whether parties would or would not have the benefit of legal counsel. Statements in both House and Senate committee reports regarding this provision of the APA state simply that it is "designed to confirm and make effective" the "statutory and mandatory right" of interested persons to appear personally or with counsel before the agency. Sen. Doc. No. 248, 79th Cong., 2d Sess. 205, 263 (1946).

[2] See *SEC* v. *Csapo*, 533 F.2d 7 (D.C. Cir. 1976); *Professional Reactor Operator Society* v. *NRC*, 939 F.2d 1047 (D.C. Cir. 1991).

III. Informing Persons of Their Right to Counsel

Agencies should be sensitive to the right to counsel that persons compelled to appear before it are granted under the APA and other statutes, and should consider when it is appropriate to advise such an individual of this right. Where necessary, agencies should consider providing training on this subject to field investigators. In the interest of maintaining an effective working relationship between federal regulatory agencies and regulated parties, agencies should consider whether it is appropriate to conduct a compelled investigative proceeding in the absence of legal counsel when it is apparent that a person is unaware of his or her right to counsel.

[FR Doc. 94–2225 Filed 1–31–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agriculture Research and Extension Users Advisory Board and Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board and the Joint Council on Food and Agricultural Sciences.

Date: February 13–16, 1994.

Time: February 13–3:30 p.m.–6 p.m. (UAB). February 14–8:30 a.m.–5:30 p.m. (UAB & JC). February 15–8:30 a.m.–5:30 p.m. (UAB & JC). February 16–8:30 a.m.–5:30 p.m. (UAB).

Place: U.S. Department of Agriculture, 14th & Independence Avenue, SW., Administration Building, room 104A, Washington, DC 20250.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: To review FY95 proposed budget for agricultural science and education programs and write FY96 priorities report.

Contact person for agenda and more information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees; room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; Telephone (202) 720–3684.

Done in Washington, DC, this 21st day of January 1994.

John Patrick Jordan,

Administrator.

[FR Doc. 94–2201 Filed 1–31–94; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Designation of the State of Alabama

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Alabama Department of Agriculture and Industries (Alabama) to provide official inspection and Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: March 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 1, 1993, **Federal Register** (58 FR 46156), FGIS announced that the designation of Alabama ends on February 28, 1994, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by October 1, 1993. Alabama, the sole applicant, applied for designation in the entire area currently assigned to it.

FGIS requested comments on the applicant in the October 29, 1993, **Federal Register** (58 FR 58148). Comments were due by December 1, 1993. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Alabama is able to provide official services in the geographic area for which they applied.

Effective March 1, 1994, and ending February 28, 1997, Alabama is designated to provide official inspection and Class X or Class Y weighing services in the entire State of Alabama, except those export port locations within the State.

Interested persons may obtain official services by contacting Alabama at 205–690–6154.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 26, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–2126 Filed 1–31–94; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the Jamestown (ND) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Grain Inspection, Inc. (Jamestown), will end July 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 2, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection during regular business hours at this address located at 1400 Independence Avenue, S.W.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better

able than any other applicant to provide such official services.

FGIS designated Jamestown, main office located in Jamestown, North Dakota, to provide official inspection services under the Act on August 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Jamestown ends on July 31, 1994. The geographic area presently assigned to Jamestown, in the State of North Dakota, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County; the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Coop Elevator, Fessenden, Farmers Union Elevator, and Manfred Grain, both in Manfred, all in Wells County (located inside Grand Forks Grain Inspection Department, Inc.'s, area); and Norway Spur, and Oakes Grain, both in Oakes, Dickey County (located inside North Dakota Grain Inspection Service, Inc.'s, area).

Exceptions to Jamestown's assigned geographic area are the following locations inside Jamestown's area which have been and will continue to be serviced by the following official agency--Minot Grain Inspection, Inc.: Benson Quinn Company, Underwood; and Missouri Valley Grain Company, Washburn, all in McLean County.

Interested persons, including Jamestown, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning August 1, 1994, and ending July 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 26, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–2125 Filed 1–31–94; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicant for Designation in the Geographic Area Currently Assigned to the Memphis (TN) Agency, and Announcement that there were no Applicants for the State of Alaska

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests comments on the applicant for designation to provide official services in the geographic area currently assigned to Memphis Grain and Hay Association (Memphis), and announces that there were no applicants for the geographic area currently assigned to the Alaska Department of Natural Resources, Division of Agriculture (Alaska).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by March 2, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection during regular business hours at the above address located at 1400 Independence Avenue, S.W.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1993, **Federal Register** (58 FR 63332), FGIS asked persons interested in providing official services in the geographic areas assigned to Memphis and Alaska to submit an application for designation. Applications were due by December 31, 1993.

There were no applicants for the geographic area currently assigned to Alaska. FGIS does not plan to seek other applicants for Alaska due to the low number of requests for official services. FGIS is asking for comments on the need for official services in Alaska. Persons wishing to obtain official services in Alaska after May 31, 1994, should contact FGIS' Washington Office at 206–753–9072 (FAX: 206–586–5257).

Memphis, the only applicant, applied for designation in the entire area currently assigned to it. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning Memphis and to submit comments on the need for official services in Alaska. Commenters are encouraged to submit reasons and pertinent data on the need for services in Alaska and for support or objection to the designation of Memphis. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 26, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–2127 Filed 1–31–94; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF AGRICULTURE

Forest Service

[OR–015–94–4410–02; G4–047]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Eastside Ecosystem Management Strategy, Pacific Northwest Region

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) propose to develop and adopt a coordinated ecosystem management strategy for forests and public lands east of the Cascade Mountains in Oregon and Washington. The strategy will include direction which will protect and enhance aquatic ecosystems for anadromous fish and bull trout (formerly known as the PACFISH strategy) and terrestrial ecosystems. It will also address the social and economic interactions with these biological variables. The purpose is to carry out President Clinton's mandate of July 1993 to develop a scientifically sound and ecosystem-based strategy for management of these lands. The selected alternative will result in amendment to the Forest Service Regional Guide for Oregon and Washington and amendment or revision of applicable national forest land management plans and BLM resource management plans.

DATES: Comments concerning the scope of the analysis should be received in writing by March 3, 1994.

ADDRESSES: Send written comments concerning this proposal to Jeff D. Blackwood, Project Manager, 112 E. Poplar St., Walla Walla, Washington 99362.

FOR FURTHER INFORMATION CONTACT: George R. Pozzuto, EIS Team Leader, 112 E. Poplar St., Walla Walla, Washington 99362, phone (509) 522–4030.

SUPPLEMENTARY INFORMATION: This EIS will address all lands east of the crest of the Cascade Mountains in the states of Oregon and Washington that are managed by the Forest Service or BLM. The selected alternative will result in amendment to the Forest Service Regional Guide for Oregon and Washington and amendment or revision to the Land Management Plans (forest plans) for the Colville, Okanogan, Wenatchee, Gifford Pinchot, and portions of the Umatilla National Forests in Washington; the Deschutes, Fremont, Malheur, Ochoco, portions of the Umatilla, Wallowa-Whitman, Mt. Hood and Winema National Forests and the Crooked River National Grassland in Oregon. The BLM Resource Management Plans (RMPs) which are entirely within the proposed EIS analysis area include the Spokane RMP (Spokane District), baker RMP (Vale District), and Two Rivers and John Day RMPs (Prineville District). In addition, forested portions of the Brothers-LaPine RMP (Prineville District) and Three Rivers RMP (Burns District) will be reviewed in the EIS.

The BLM Klamath Falls Resource Area (Lakeview District) is now preparing its RMP and is expected to incorporate equivalent ecosystem management strategies in conjunction with other western Oregon BLM and Forest Service plans. Depending upon the results of public scoping and the basin-wide assessment, additional portions of the BLM managed lands in the Lakeview and Vale Districts may be included in the EIS and lead to land use plan amendments. At this time, BLM lands subject to potential plan decision amendments aggregate approximately 1.6 million acres in Oregon and Washington. Supplemental information concerning the approved RMPs will be available shortly from the BLM District offices noted above and mailed to all persons currently on the District contact lists.

The land area involved in this EIS overlaps to some degree with the land area addressed in the Draft Supplemental Environmental Impact Statement (DSEIS) on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Notice of Availability published in the **Federal Register** on July 28, 1993, 53 FR 40444). The July DSEIS addressed all lands within the range of the northern spotted owl, some of which are on the east side of the Cascade Crest. It is these lands, which are within the range of the spotted owl and east of the Cascade Crest, that are within the scope of both this eastside EIS and the DSEIS. Included in this overlap are parts of the Winema, Deschutes, Mt. Hood, Gifford Pinchot, Okanogan and Wenatchee National Forests. Whatever decision is made as a result of the SEIS will be considered in this Eastside Ecosystem Management EIS.

To support this EIS, a basin-wide assessment will be made for the interior Columbia River Basin (roughly described as that portion of the Columbia River upstream from Bonneville Dam). This assessment will characterize and assess broad ecosystems, and describe social, economic, and ecological processes and functions. The biophysical provinces (those land areas having relatively similar landform, climate, and other biological and physical properties that lead to certain potential vegetation types) within this broad geographic area have been altered over time by many factors including drought, fire suppression, livestock grazing, mining, global climate change, timber harvest and management, water uses for energy and irrigation, and urbanization. The results of this assessment will be used, in part, to analyze the effects of alternative exosystem management strategies for eastern Oregon and Washington, including effects of continued management under current forest or land use plans (i.e. the no action alternative).

This EIS will analyze a number of alternatives, one or more of which will include anticipated interim direction for maintaining or restoring anadromous fish habitat. It is expected that EISs will be initiated in Idaho and California to protect and enhance aquatic ecosystems for anadromous fish and bull trout. These EISs will be done in a coordinated manner between Forest Service Regional and BLM State Offices.

In the case of Alaska, the BLM and the Forest Service are examining the need for coordinated direction to protect and enhance aquatic ecosystems for anadromous fish. Also, the Forest Service, in cooperation with the State of Alaska, is conducting studies and monitoring existing management practices in Alaskan anadromous fish habitats on the Tongass National Forest as directed in the Fiscal Year 1994 Appropriations Act.

The scoping process as defined in the Council of Environmental Quality's National Environmental Policy Act (NEPA) implementing regulations will be used to identify issues for developing a range of management alternatives that simultaneously consider sustained long-term economic, social, and ecological values of the region. Initial meetings are planned for John Day, Klamath Falls, Bend, LaGrande, Salem, and Lakeview in Oregon, and Chewelah, Okanogan, Seattle, and Walla Walla in Washington. Specific dates, times and locations for

the meetings will be announced in local newspapers of general distribution.

Alternatives will be developed by comparing existing conditions to desired future conditions described by the public and Federal land managers and scientists. Information will be used from the basin-wide assessment, as well as the "Eastside Forest Ecosystem Health Assessment", recommendations of the "Eastside Forests Scientific Society Panel", and other sources. The selected alternative is intended to serve as a vehicle by which to move from today's conditions to those conditions desired by society, and to be capable of being ecologically sustained, while leaving options available for future generations. The strategy will include integration of social values, ecological capabilities, and economic relationships including treaty rights reserved by various American Indian Tribes on ceded lands. The strategy also will include management direction derived from analysis of conditions at the biophysical province scale to (1) respond to current species and habitats of concern (currently listed or being considered for listing being listed under the Endangered Species Act or designated as sensitive species by the Forest Service or BLM); (2) assure viability of species within the context of desired ecosystem function and structure; (3) support the needs of dynamic ecosystems that change over time and space; and (4) recognize the role that disturbance mechanisms play in their evolution and maintenance.

The Forest Service will be the lead agency for this analysis with the BLM as a cooperating agency. The two agencies will consult with the Fish and Wildlife Service and the National Marine Fisheries Service pursuant to the Endangered Species Act. Other Federal agencies such as the Soil Conservation Service and the Environmental Protection Agency, and Tribal and State Governments also will be involved.

The responsible official for National Forest System lands will be the Regional Forester, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208. The responsible official for public lands administered by the Bureau of Land Management will be the State Director for Oregon and Washington, P.O. Box 2965, Portland, Oregon 97208.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in November 1994 and will be available for public review at that time. The comment period on the draft EIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period on the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

It is expected that the final EIS will be filed with the Environmental Protection Agency approximately 6 months after the draft EIS is published. There will be two records of decisions issued; one for National Forest System Lands and one for BLM public lands in Oregon and Washington. The decision for National Forest System Lands will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: January 21, 1994.

John E. Lowe,

Regional Forester.

Dated: January 21, 1994.

D. Dean Bibles,

State Director.

[FR Doc. 94–2050 Filed 1–31–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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)

Agency: International Trade Administration.

Title: Application for an Export Trade Certificate of Review.

Form numbers: Agency—ITA–4093P, OMB—0625–0125.

Type of request: Extension of the expiration date of a currently approved collection.

Burden: 15 respondents; 480 reporting hours.

Average hours per response: 32 hours.

Needs and uses: The Export Trading Company Act of 1982 required the Department of Commerce to establish a program to evaluate applications for Export Trade Certificates of Review, and with concurrence of the Department of Justice, issue such certificates in appropriate cases. The information contained in the application is used by both Departments in determining whether or not to approve an application and issue an Export Trade Certificate of Review. A certificate provides its holder and members named in the certificate with immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate. It also provides disincentives for frivolous private suits and limits liability in private actions to actual damages, when the challenged activities are covered by an Export Trade Certificate of Review and undertaken in conformity with its terms and conditions. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving joint action by domestic competitors. This antitrust uncertainty was cited as one of the major impediments to increased U.S. exports.

Affected public: State or local governments, businesses or other for profit; small businesses or organizations; non-profit organizations (especially trade associations)

Frequency: On Occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–

3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 26, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–2254 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[C–549–803]

Malleable Iron Pipe Fittings From Thailand; Intent To Revoke Countervailing Duty Order

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

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on malleable iron pipe fittings from Thailand. Domestic interested parties who object to this revocation must submit their comments in writing not later than 30 days from the publication date of this notice.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1989, the Department of Commerce (the Department) published a countervailing duty order on malleable iron pipe fittings from Thailand (54 FR 6439). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than 30 days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: January 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–2239 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–812]

Preliminary Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy

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

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Annika L. O'Hara or David R. Boyland, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4198 and (202) 482–0588, respectively.

PRELIMINARY DETERMINATION: The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Italy of grain-oriented electrical steel. For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (58 FR 49018, September 21, 1993), the following events have occurred.

On September 20, 1993, we issued a questionnaire to the European Community ("EC") in Washington, DC, concerning petitioners' allegations. On October 21, 1993, we received a response from the EC. We issued deficiency questionnaires to the EC on November 1, 1993, and January 10, 1994, and we received responses on November 19, 1993, and January 18, 1994.

On September 23, 1993, we issued a questionnaire to the Government of Italy ("GOI") in Washington, DC, concerning petitioners' allegations. The GOI indicated on September 30, 1993 that ILVA S.p.A. ("ILVA") was the only company in Italy producing and exporting grain-oriented electrical steel to the United States. On October 7, 1993, petitioners requested that the Department reconsider its decision not to include in its investigation six subsidy programs alleged in the petition. On October 29, 1993, the Department decided to include two of these alleged programs. We issued a questionnaire to the GOI regarding these two programs on October 29, 1993.

On November 3, 1993, we postponed the preliminary determination to January 24, 1994 (58 FR 59990, November 12, 1993). On November 4, 1993, we published in the **Federal Register** a notice revising the scope of this investigation (58 FR 58838).

On November 8 and 12, 1993, we received questionnaire responses from the GOI and ILVA. We issued deficiency questionnaires to these parties on November 24 and December 2, 1993, and on January 10, 1994. We received responses on December 15, 20, and 23, 1993, and on January 18 and 21, 1994. We also received certain factual information requested by the Department from ILVA on January 12, 1994.

Scope of Investigation

This investigation concerns the following class or kind of merchandise: Grain-oriented electrical steel ("electrical steel") from Italy.

The product covered by this investigation is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of

another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7225.10.0030, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1030, 7226.10.5015, 7226.10.5065, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of electrical steel from Italy materially injure, or threaten material injury to, a U.S. industry. On October 12, 1993, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Italy of the subject merchandise (58 FR 54168, October 20, 1993).

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corp.; Armco, Inc.; United Steelworkers of America; Butler Armco Independent Union; and Zanesville Armco Independent Union.

Corporate History of Respondent ILVA

Prior to 1987, electrical steel in Italy was produced by Terni S.p.A., a main operating company of Finsider. Finsider was a government-owned holding company which controlled all state-owned steel companies in Italy. In a restructuring of the Italian steel industry in 1982, Terni S.p.A. took over two companies, Lovere Sidermeccanica S.p.A. ("Lovere") and Attivita Industriali Triestine S.p.A. ("Trieste"), from Italsider, another Finsider-owned steel producer. Italsider has previously been found to be the recipient of countervailable subsidies (see Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy ("Certain Steel") (58 FR 37327, July 9, 1993).

As part of a subsequent restructuring in 1987, Terni S.p.A. transferred its assets to a new company, Terni Acciai Speciali ("TAS") which thereafter held all the assets for electrical steel production in Italy. Lovere and Trieste ended up being wholly-owned subsidiaries of TAS. In 1988, another restructuring took place in which Finsider and its main operating companies (TAS, Italsider, and Nuova Deltasider) entered into liquidation and a new company, ILVA S.p.A. ("ILVA"), was formed. ILVA took over some of the assets and liabilities of the liquidating companies. With respect to TAS, part of its liabilities and all of its viable assets, including all the assets associated with the production of electrical steel, were transferred to ILVA on December 31, 1988. ILVA itself became operational on January 1, 1989. Part of TAS' remaining assets and liabilities were transferred to ILVA on April 1, 1990. After that date, TAS no longer had any manufacturing activities.

ILVA currently consists of several operating divisions, one of which is a Terni division which manufactures the subject merchandise. In addition, ILVA is the majority owner of a large number of separately incorporated subsidiaries. The subsidiaries produce various types of steel products and also include service centers, trading companies, an electric power company, etc. ILVA and its subsidiaries together constitute the ILVA Group. The ILVA Group is owned by the Instituto per la Ricostruzione Industriale ("IRI"), a holding company wholly-owned by the GOI.

For purposes of this investigation, we have calculated the amount of subsidies bestowed on the subject merchandise by cumulating benefits provided to Terni, TAS and ILVA from 1978 through 1992.

Spin-offs

ILVA's responses show that between 1990 and 1992, the company sold "productive units," as defined in the General Issues Appendix, to private buyers. (See General Issues Appendix to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria ("General Issues Appendix") (58 FR 37217, 37265–8, July 9, 1993)). Using the pass-through methodology described in the General Issues Appendix, we have calculated the proportion of subsidies received by ILVA that "left" the company as a result of the sales of these productive units.

ILVA has also stated that TAS sold Lovere and Trieste to private buyers before the 1988 restructuring of Finsider into ILVA. However, we have not done pass-through calculations for these two spun-off units. With respect to Trieste, TAS's 1989 Annual Report indicates that the entire capital stock of Trieste was transferred to ILVA in 1989. Therefore, the alleged sale to a private buyer does not seem to have taken place. Regarding Lovere, TAS sold this company to Fin.Lo S.p.A. in 1990, according to TAS's 1990 Annual Report. However, ILVA has failed to provide the information requested by the Department in order to conduct its pass-through analysis.

Equityworthiness and Creditworthiness

Petitioners have alleged that Terni, TAS and ILVA were unequityworthy in each year they received equity infusions from the GOI and that the equity infusions were, therefore, inconsistent with commercial considerations. Petitioners have also alleged that Terni and ILVA were uncreditworthy in every year between 1978 and 1992.

With respect to our analysis of the companies' equityworthiness, we noted that the companies have sustained losses from 1976 onward. ILVA had a brief period of operating profits for 1989 through 1991, but its return on equity during this period declined until there was a negative return. No evidence of equity investment by private investors during the period in question was provided in the responses. Terni and ILVA's debt to equity ratios were relatively high; read in conjunction with other financial indicators, such as negative rates of return on equity and sales plus net losses for numerous years, the companies' financial performance appears to be weak. Based on our analysis of the responses, the Department preliminarily finds that Terni, TAS and ILVA were unequityworthy from 1978 through 1992, except in 1979, 1983, 1988, and 1989 when no equity infusions were received. See also January 13, 1994 Memorandum to Director of Accounting.

After examining Terni and ILVA's current, quick, times interest earned and debt to equity, the Department also preliminarily determines that Terni, TAS and ILVA were uncreditworthy from 1978 through 1992. For example, the companies' times interest earned ratios were anemic for approximately 16 years, indicating a weak long-term solvency. Furthermore, the debt to equity ratio for both Terni and ILVA were relatively high. See also January 13, 1994 Memorandum to Director of Accounting.

For uncreditworthy companies, § 355.44(b)(6)(iv) of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, May 31, 1989) directs us to use, as the benchmark interest rate, the

highest long-term interest rate plus an amount equal to 12 percent of the prime rate. However, because the highest long-term interest rate is not available, we have used the reference rate provided by the Bank of Italy. We then added to this rate an amount equal to 12 percent of the Italian prime rate. We have used the resulting interest rate for each appropriate year as the benchmark for our long-term loan calculations, and as the discount rate for allocating over time the benefit from equity infusions and non-recurring grants.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies (the POI) is calendar year 1992.

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For those subsidies received by ILVA that were allocated over time, we then performed the pass-through analysis discussed in the General Issues Appendix at 37269. For each program, we then divided the benefit attributable to ILVA by a denominator which represented the sales of ILVA S.p.A. or the sales of the Terni division of ILVA, depending on which company received the benefit. (The program sections below indicate which denominator has been used for each program.) Next, we added the benefits for all programs, including the benefits for programs which were not allocated over time, to arrive at ILVA's total subsidy rate. Because ILVA is the only respondent company in this investigation, this rate equals the country-wide rate.

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 subsidy in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

1. Equity Infusions

a. New Equity Capital. The GOI, through the IRI, provided new equity capital to Terni, TAS, or ILVA in every year from 1978 through 1991, except in 1979, 1983, 1988, and 1989. Because the GOI provided no information with respect to specificity, we are assuming as the best information available ("BIA"), that these equity investments were provided specifically to the steel industry. (See also Certain Steel.)

As discussed above, we have preliminarily determined that Terni, TAS, and ILVA were unequityworthy in each year they received new equity capital. Therefore, these provisions of equity were inconsistent with commercial considerations and countervailable.

To calculate the benefit for the POI, we treated each of the equity amounts as a grant and allocated the benefits over a 15-year period. (Our treatment of equity as grants and our choice of allocation period is discussed in the General Issues Appendix, at 37239 and 37225, respectively.)

For equity infusions provided to Terni or TAS, we have divided the benefit allocated to the POI by the sales of the Terni division of ILVA. We chose this sales denominator because this division of ILVA most closely resembles the former companies, Terni and TAS. For equity infusions into ILVA, we used ILVA S.p.A.'s sales as our denominator, as benefits from these investments are not tied to any division of ILVA. On this basis, we find the estimated net subsidy from equity infusions into Terni, TAS, and ILVA, to be 9.66 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

b. Restructuring of Finsider into ILVA. As discussed above under the "Corporate History" section of this notice, the GOI liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. At the same time, the Finsider Group had total liabilities of 10.6 trillion lire. ILVA assumed 4.3 trillion lire of this debt and the remaining 6.3 billion was assumed by IRI. In 1990, additional assets and liabilities of TAS went to ILVA.

In Certain Steel, we determined that the Finsider assets transferred to ILVA were an equity infusion into ILVA and that the portion of the debt assumed by IRI represented a debt forgiveness to ILVA. Based on those findings in Certain Steel, petitioners in this proceeding have alleged that the 1988 equity infusion that created ILVA and the 1988 debt forgiveness constitute subsidies to electrical steel. Additionally, petitioners have alleged that: (1) A 1988 forgiveness of TAS's debt by Finsider and (2) various other forms of assistance provided after 1988 to TAS, confer subsidies on the subject merchandise.

We have reconsidered the Department's analysis in Certain Steel. We note that the Department applied BIA in the final determination in that case because we did not verify ILVA's data. Much of the BIA was taken from the petition.

Based on our review of the information presented in this investigation, we have preliminarily concluded that the analysis used in Certain Steel was inconsistent with the restructuring methodology described in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria ("Certain Steel from Austria") (58 FR 37217, July 9, 1993), Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain ("Certain Steel from Spain") (58 FR 37374, July 9, 1993) and the General Issues Appendix. In the Austrian case, the Department examined a government-owned operating company ("VAAG") which was split up into numerous operating companies. In order to effect this split-up, the assets and liabilities of the original company were divided among the new operating companies.

The Department ruled in Certain Steel from Austria, that this "equity infusion" creating the new operating companies "was merely a redistribution of existing assets" which, in and of itself, did not give rise to any benefits (at 37222). Instead, the benefit that arose through the restructuring of VAAG was the fact that losses that had been incurred by the original company were not distributed to the new operating companies. Because it did not receive a portion of those losses, the Department determined that the operating company under investigation effectively received a grant in the amount of the losses that should have been distributed to it.

Similarly, in Certain Steel from Spain, a cold rolling mill was transferred from one government-owned company to another (at 37379). We did not treat the redistributed capital as an equity infusion into the recipient company. Instead, prior subsidies allocable to the cold rolling mill were allocated to its new owner.

We believe that the restructuring of Finsider into ILVA is analogous to the situations in Austrian and Spanish steel

cases. The assets and a portion of the liabilities that resided in the government-owned Terni/TAS were merely redistributed to ILVA. These assets brought subsidies with them, i.e., the subsidies previously received by Terni/TAS and described elsewhere in this notice, but the movement of assets from Terni and the other former Finsider companies such as Italsider into ILVA does not constitute a countervailable equity infusion.

This does not mean, however, that no new benefits were received by ILVA through the 1988 restructuring and the subsequent transfer of assets and liabilities in 1990. In Certain Steel from Austria, a benefit arose because accumulated losses were not distributed along with assets and liabilities. In the case of the Finsider restructuring, and more specifically the transfer of assets from Terni/TAS to ILVA, ILVA received its Terni division with assets in excess of liabilities. This was despite the fact that prior to the transfer Terni/TAS's liabilities exceeded its assets. Thus, as part of the transfer process, Terni/TAS's balance sheet was effectively rewritten so as to change its equity from negative 99,885,535,826 lire to positive 317,836,000,000.

It is not clear from the information provided in the petition or the responses exactly how this change was effected. As noted above, there was forgiveness of Terni/TAS and Finsider debt in 1988. Also, petitioners have alleged various forms of assistance to Terni/TAS since 1988. We believe that the debt forgiveness and, perhaps, some of the further assistance alleged by petitioners may have been the tools used by the GOI to rewrite Terni's balance sheet. However, rather than focus on these individual pieces of assistance, we have relied on a comparison of what Terni looked like before the restructuring and what it looked like after the restructuring. We believe this is the most reasonable approach given the complicated nature and extensive number of transactions surrounding the transfer. At verification, we will seek to clarify the events that made up the restructuring. We will continue to examine our approach to this issue throughout the remainder of the investigation and will take into consideration comments submitted by interested parties for purposes of our final determination. Given the complexity of this situation, we invite particular comment focused on this issue.

Based on the analysis described above, we are treating as a grant the difference between Terni/TAS's equity position before and after the restructuring. Because the transfer of assets and liabilities from Terni/TAS to ILVA took place in two parts, first in 1988 and then in 1990, we have divided the total amount of the grant between these two years. In 1988, 60 percent of TAS's assets were transferred. Therefore, we have treated 60 percent of the grant amount as having been received in that year. The remainder was treated as a grant received in 1990. The benefit allocated to the POI was divided by the Terni division's sales in the POI.

It may be argued that the amount we have countervailed overstates the benefit to production of electrical steel because a portion of the assets that existed in Terni/TAS prior to the restructuring continues to reside in Terni/TAS in liquidation. Despite this, the Department treated the entire benefit arising from the rewriting of Terni/TAS's balance sheet as a subsidy to the Terni division of ILVA. On the other hand, it may be argued that the production of electrical steel benefits from alleged subsidies received by Terni/TAS after the final transfer of assets in 1990.

We preliminarily disagree with both of these arguments. The effect of the 1988 and 1990 transfers was to move the production activities of Terni/TAS to ILVA. As best we can follow, TAS remained to close down non-productive facilities and to carry on financial operations connected with its liquidation. Consistent with the position articulated most recently by the Department in the General Issues Appendix, at 37269, subsidies do not remain with closed down operations. Therefore, it is proper to assign all benefits from the restructuring to the ongoing production operations now located in ILVA. Similarly, because the entire production operations have transferred to ILVA and because we believe we have captured the full amount of the assistance needed to effect that transfer, any alleged subsidies to what remained in TAS do not provide any benefit to the subject merchandise.

Based on the information provided above, we preliminarily find the estimated net subsidy from the restructuring of Finsider to ILVA to be 5.70 percent *ad valorem* for all manufacturers, producers and exporters in Italy of the subject merchandise.

c. The 1987 Restructuring. As part of a 1987 restructuring, Terni conferred its assets to TAS. For the reasons discussed under the "Restructuring of Finsider into ILVA" section above, we have preliminarily determined not to treat the transfer of assets as an equity infusion into TAS. However, we have treated as an equity infusion capital received by TAS in 1987 that was not associated with the asset transfer. The estimated net subsidy from this infusion is included in the equity calculation above (see section a). Also, the subsidies received by Terni prior to the 1987 transfer are being allocated in full to TAS and, from 1988, to ILVA.

d. The Transfer of Lovere and Trieste to Terni in 1982. As discussed in the "Corporate History" section of this notice, Lovere and Trieste were transferred from Italsider to Terni as part of a 1982 restructuring. Petitioners included the value of the transferred assets as part of their equity allegation for 1982.

We have preliminarily determined that this transaction is more correctly characterized as an internal corporate restructuring that warrants a reallocation of subsidies among government-owned units. When Italsider received untied subsidies (e.g., equity infusions), those subsidies benefitted all of Italsider's operations, including Lovere and Trieste. The transfer of these two industrial plants to Terni did nothing to alter those subsidies. (See Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom 58 FR 12534, January 27, 1993 ("Leaded Bar")). Therefore, consistent with our restructuring methodology, when Lovere and Trieste "traveled" to Terni, they brought with them a portion of the subsidies which had been provided to Italsider.

As stated in the General Issues Appendix at 37266, the Department does not consider internal corporate restructurings that transfer or shuffle assets among related parties to constitute a "sale" for purposes of its pass-through analysis. However, when assets are transferred internally, the Department still needs to allocate subsidies.

We do not have sufficient information on the current record as to the total amount of untied benefits received by Italsider prior to the transfer of Lovere and Trieste. ILVA has, however, provided the amount of equity infusions received by Italsider from 1978 (the beginning of our allocation period) through 1982. Therefore, for purposes for the preliminary determination, we have calculated the amount of subsidies that travelled with Lovere and Trieste from Italsider to Terni based on the equity infusions provided to Italsider.

We determined the amount of Italsider's subsidies attributable to Lovere and Trieste by calculating the percentage of assets these two

companies represented of the total Italsider assets. We applied this percentage to Italsider's subsidy amount to calculate the portion of benefit Lovere and Trieste carried with them to Terni. This benefit for the POI was divided by the total sales of the Terni division of ILVA. On this basis, we find the estimated net subsidy from the transfer of Lovere and Trieste to Terni to be .49 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

2. Interest-Free Loan to ILVA

Based on ILVA's 1992 Annual Report, petitioners have alleged that the company received a 300 billion lire equity infusion in that year. According to ILVA, this amount does not represent an equity infusion but rather a loan.

Because the GOI has provided no information with respect to specificity, we are assuming as BIA, that this loan was provided specifically to ILVA. ILVA has provided no interest rate, repayment schedule, or other terms for the loan. Therefore, we have assumed that this was an interest-free loan. To determine the benefit, we first calculated the interest that would have been paid during the POI on a 300 billion lire loan at the benchmark interest rate. We then divided this amount by ILVA S.p.A's sales in the POI. On this basis, we determine the estimated net subsidy from this program to be .65 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

3. Law 675/77 Preferential Financing

a. General Description of Law 675/77. Law 675/77 was enacted to bring about restructuring and reconversion in the following industrial sectors: (1) Electronic technology; (2) the manufacturing industry; (3) the agro-food industry; (4) the chemical industry; (5) the steel industry; (6) the pulp and paper industry; (7) the fashion sector; and (8) the automobile and aviation sectors. Law 675/77 also sought to promote optimal exploitation of energy resources, and ecological and environmental recovery.

A primary goal of this legislation was to bring all government industrial assistance programs under a single law in order to develop a system to replace indiscriminate and random public intervention by the GOI. Other goals were (1) to reorganize and develop the industrial sector as a whole; (2) to increase employment in the South; and (3) to maintain employment in depressed areas. Among other measures taken, the Interministerial Committee for the Coordination of Industrial Policy ("CIPI") was created as a result of Law 675/77. CIPI approves specific projects in each of the industrial sectors listed above.

Six main programs were provided under Law 675/77: (1) Interest contributions on bank loans; (2) mortgage loans provided by the Ministry of Industry at subsidized interest rates; (3) interest contributions on funds raised by bond issues; (4) capital grants for projects in the South; (5) personnel retraining grants; and (6) VAT reductions on purchases of capital goods by companies in the South.

Except for personnel retraining grants, Law 675/77 went into effect in 1977. According to ILVA, the law has since expired. The GOI has not been specific on this point but has stated that no company has applied for funding under Law 675/77 since 1982.

Information provided by the GOI shows that the steel industry was the single largest recipient of benefits under Law 675/77 programs (1) through (3), listed above. The GOI's response also indicates that the steel industry received a disproportionate share of the benefits under this law. Based on this information, the Department preliminarily determines that the steel industry was a dominant user of programs under Law 675/77 and, therefore, that benefits received by ILVA under this law are being provided to a specific enterprise or industry or group of enterprises or industries. (See also Certain Steel.)

b. Countervailable Assistance Under Law 675/77.

(i) Interest Contributions on Bank Loans. Italian commercial banks provided loans at market interest rates to industries designated under Law 675/77. However, the interest owed by the recipient companies was offset by interest contributions from the GOI. Terni received bank loans with interest contributions under Law 675/77 which were outstanding in the POI.

To determine whether this assistance conferred a benefit, we compared the effective interest rate paid on these loans to the benchmark interest rate, discussed above. Based on this comparison, we preliminarily determine that the financing provided under this program is inconsistent with commercial considerations.

Because Terni knew that it would receive the interest contributions when it obtained the loans, we consider the contributions to constitute reductions in the interest rates charged rather than grants (see Certain Steel at 37335).

To calculate the benefit we used our standard long-term loan methodology as described in § 355.49(c)(1) of the Proposed Regulations. We then divided the benefit allocated to the POI by the 1992 sales made by the Terni division of ILVA. On this basis, we determine the estimated net subsidy from this program to be .07 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

(ii) Mortgage Loans from the Ministry of Industry. Under Law 675/77, companies could obtain low-interest mortgage loans from the Ministry of Industry. The response indicates that Terni received two such loans which were still outstanding in the POI.

To determine whether these loans were provided on terms inconsistent with commercial considerations, we used the benchmark interest rates described above. Because the interest rates paid on the Law 675/77 loans were below the benchmark interest rates, the Department preliminarily determines that loans provided under this program are countervailable.

We calculated the benefit using our standard long-term loan methodology. We then divided the benefit allocated to the POI by the 1992 sales made by the Terni division of ILVA. On this basis, we determine the estimated net subsidy from this program to be .20 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

(iii) Interest Contributions on Loans Financed by IRI Bond Issues. Under Law 675/77, IRI was allowed to issue bonds to finance restructuring measures of companies within the IRI Group. The proceeds from the sales of the bonds were then re-lent to IRI companies. The effective interest rate on such loans was reduced by interest contributions made by the GOI. Terni had two of these loans outstanding during the POI. Both loans had variable interest rates.

To determine whether these loans were countervailable, the Department used the benchmark interest rate described above. (Because the loans in question have variable interest rates, we would have preferred to use a variable rate benchmark. However, we lack information to do this.) We compared the benchmark rates in the year the loans were received to the effective rates paid by Terni in that year and found that these loans were provided on terms inconsistent with commercial considerations.

To determine the benefit, we first calculated the difference between what was paid on these loans during the POI and what would have been paid during the POI had the loans been provided on commercial terms. We then divided the resulting difference by the 1992 sales made by the Terni division of ILVA. On

this basis, we determine the estimated net subsidy from this program to be .48 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

4. Interest Grants for "Indirect Debts" Under Law 750/81

Interest grants pursuant to Law 750/81 were extended between 1981 and 1983 to IRI-owned companies undergoing reconversion. Respondents have indicated that Law 750/81 was enacted to implement Article 12 of Law 675/77 (see section I.3, above), but that the interest contributions provided for under Law 750/81 were separate from those made under Law 675/77. Article 12 of Law 675/77 outlines various rules and budgetary considerations with regard to the extension of financial aid to state-owned companies under Law 675/77.

Terni received 48.6 billion lire and 27.5 billion lire under this program in 1982 and 1983, respectively. The response does not tie the interest contributions to specific loans and the payments, therefore, appear to have been provided to cover aggregate interest payments on several different loans as opposed to interest payments on specific loans.

Because interest contributions pursuant to Law 750/81 are limited to government-owned companies in reconversion, we preliminarily find that payments made under Law 750/81 also confer a countervailable subsidy. We further determine that these payments are non-recurring grants (see General Issues Appendix at 37226).

To calculate the benefit for the POI, we used our standard grant methodology (see § 355.49(b) of the Proposed Regulations) using the discount rate described above. We divided the benefit allocated to the POI by the 1992 sales of the Terni division of ILVA. On this basis, we determine the estimated net subsidy from this program to be .77 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

5. Finsider Financing

The response indicates that Terni received four loans from Finsider of which only one, provided at a variable interest rate, appears to have been outstanding in the POI. ILVA has argued that such financing from a parent company to a subsidiary is a normal transaction which should not be considered to provide a countervailable benefit.

In Certain Steel from Spain (at 37383), the Department declined to find short-term financing from the National Industrial Institute ("INI") to its subsidiary Ensidesa (the state-owned steel company under investigation) to be countervailable. In that investigation, the Department determined that there was no evidence that the financing was a result of a program designed to benefit the steel industry. Further, the Department found that INI was involved in a number of sectors outside the steel industry and that INI was capable of generating funds independently of the government.

In this investigation, however, we have found that Finsider was previously the holding company only for state-owned steel companies. Therefore, Finsider's only source of funds for internal lending, beyond government contributions, was its other steel companies. Given the financial state of Terni and Finsider's other subsidiaries (see Certain Steel at 37328), we find no reason to believe that its companies could generate such funds. More importantly, Finsider has been found to be the conduit for government-provided assistance to its steel companies. (See Certain Steel at 37329: "The GOI made these investments by transferring funds to the IRI Group, which either directly *or through Finsider* made equity infusions into (Italsider, Nuova Italsider)." Emphasis added.) The Department, therefore, preliminarily determines that all internal financing provided by Finsider is limited to Finsider-owned companies and is countervailable to the extent that such financing was provided on terms inconsistent with commercial considerations.

Because ILVA has provided incomplete information regarding this loan, the Department has used BIA for the calculation of the benefit. Specifically, ILVA did not provide the outstanding balance on this loan in the POI. Therefore, we have assumed that the entire original loan amount was still outstanding. Also, because ILVA has not reported the interest rate in effect during the POI, we have used the reported interest rate from the most recent period.

To determine whether this loan was countervailable, the Department used the benchmark interest rate described above. (Because the loan in question has a variable interest rate, we would have preferred to use a variable rate benchmark. However, we lack information to do this.) We compared the benchmark rate in the year the loan was received to the rate paid by Terni in that year and found that this loan was provided on terms inconsistent with commercial considerations.

We calculated the benefit for the POI as the difference between the interest that would have been paid under a benchmark loan and the interest that was actually paid in the POI. We then divided the benefit by the 1992 sales made by the Terni division of ILVA. On this basis, we determine the estimated net subsidy from this program to be .03 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

6. Exchange Rate Guarantee Program

This program, which was enacted by Law 796/76, provided exchange rate guarantees on foreign currency loans from the European Coal and Steel Community ("ECSC"). The recipient of a guaranteed loan would repay the loan at an agreed upon exchange rate. In the event that the lire depreciated against the currency in which the loan was denominated, the loan recipient would pay up to two percent more for the loan. Any currency fluctuations above and beyond two percent of the fixed exchange rate would be covered by the Treasury Ministry.

This program is limited to companies receiving loans under Articles 54 and 56 of the ECSC Treaty, *i.e.*, iron and steel companies. While all benefits under this program were eliminated in 1991 by Law 333, guarantees granted before the enactment of this law were still in effect in the POI.

The GOI has stated that the premium paid only covered part of the long-term costs of the program. While we question whether payments under this program are properly to be considered premiums, the fact that they are inadequate to cover the costs of operating the guarantee program is sufficient to find that the program confers a benefit. (See also Certain Steel) Moreover, we determine that benefits are provided to a specific enterprise or industry or group of enterprises or industries.

So long as the lire depreciates against the currency in which the loan is denominated by more than the two percent maximum, the GOI makes payments on the guaranteed loan. Because future currency fluctuations are not known at the time the loan is taken out, no grant equivalent can be calculated for the guaranteed loans. Therefore, we calculated the benefit as the payments on this loan made in the POI by the Treasury Ministry. We divided this amount by the 1992 sales of ILVA's Terni division. On this basis, we determine the estimated net subsidy from this program to be .08 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

7. Early Retirement

Italy has had a series of laws providing for early retirement since the late 1960s. Some older laws have been replaced by newer laws, while other older laws are still in effect, overlapping with newer legislation.

In 1981, the parliament passed Law 155/81 with the intention to encourage people to retire before the normal retirement age. Pursuant to this law, men could retire at the age of 55 and women at the age of 50. Law 155/81 covered all manufacturing industries, including steel, that the CIPI had declared to be in a state of crisis. Government documentation provided with the response shows that Italian workers received benefits under Law 155/81 through 1991. No information has been provided with respect to usage of this early retirement provision in the POI.

Law 193/84 lowered the minimum age for early retirement specifically for steel workers to 50 years for men and 47 years for women. Government documentation provided with the response shows that workers received benefits under this law through 1991. We have no information with respect to usage of the early retirement provision under Law 193/84 in 1992.

Law 181/89 introduced various social and other measures related to rationalizing the government-owned steel industry. It also set numerical targets for the number of workers who could use early retirement. Pursuant to Law 181/89, a maximum of 8,500 steel workers were allowed to use early retirement from 1989 through 1991. However, the GOI has stated that this number was insufficient to solve the problem of surplus manpower in the steel industry. Therefore, a new law was passed in 1991 (Law 223/91) which authorized another 20,000 workers to use early retirement. Of these 20,000 slots, 26 percent were allocated to the government-owned steel industry while the rest were distributed among five other industries (shipbuilding, aluminum, refractory materials and graphite electrodes, thermo-electrical engineering, and "innovative industrial companies" in highly competitive sectors).

Law 223/91 also set minimum age limits for steel workers using the early retirement provision under this law to 55 and 50 years for men and women, respectively, in the private steel industry, and 50 and 47 years for men and women, respectively, in the state-owned steel industry. Pursuant to Law 223/91, participating companies must make a financial contribution to the early retirement plan corresponding to 30 percent of the pension. ILVA's 1992 Annual Report indicates that 3,022 employees from ILVA S.p.A. used the early retirement provisions under Law 223/91 in the POI.

Finally, Decree Law 14, passed in January 1992, allowed another 25,000 workers to use the early retirement scheme. After having been re-issued several times, this Decree was turned into Law 406 in October 1992. Employees in companies which have adopted a reconstruction program approved by the Interministerial Committee for Economic Planning ("CIPE") are eligible to use the program. The age limits are 55 for men and 50 for women. The 25,000 slots are allocated by CIPE among crisis-hit companies. The Department has no information on how the slots were allocated among various crisis industries. Under Law 406/92, participating companies pay 50 percent of the pension.

The GOI has stated that early retirement is available to workers in other sectors beyond steel, e.g., commercial workers and workers in the cement industry. However, information provided with the GOI's response shows that for these other industries, the provisions for early retirement expired before the POI. Apart from the latest early retirement provision in Law 406/92, pursuant to which a limited number of workers in industries undergoing reconstruction are eligible for early retirement, only eight industries (including steel) were eligible for some form of early retirement program in the POI. These industries were: steel, shipbuilding, aluminum, refractory materials and graphite electrodes, thermo-electrical engineering, and "innovative industrial companies," all pursuant to Law 223/91; dock workers pursuant to Law 230; and workers in the publishing industry pursuant to Law 416.

Based on this, we preliminarily determine that early retirement benefits are provided to a specific enterprise or industry or group of enterprises or industries. (See also Certain Steel.)

Respondents have further stated that Italian companies have no legal obligation to offer early retirement to their employees. However, based on a statement made during verification by an official at a private Italian steel company, we found in Certain Steel that although Italian companies have no legal obligation to offer their employees early retirement as an alternative to being laid off, social factors such as the threat of strikes and social unrest prevent companies from simply firing surplus workers. In addition, the GOI has stated in its response that early retirement is used as an alternative to collective lay-offs. Therefore, we preliminarily determine that the government is relieving the steel companies of an obligation they would otherwise incur. Hence, the program is countervailable.

In the General Issues Appendix to Certain Steel from Austria (at 37226), we listed early retirement programs as typically providing recurring benefits. We have, therefore, treated benefits received by ILVA under the early retirement program as a recurring grant.

To calculate the benefit, we have estimated the amount the company saved by not having to pay wages to the workers who took early retirement in 1992 by reference to ILVA's 1992 Annual Report, which provides the total number of employees, the total labor cost, and the number of workers who used early retirement. Had it been provided, we would have subtracted ILVA's cost for the program from the wage bill. (We have asked ILVA to provide this list before verification.)

We divided this benefit by the 1992 sales made by ILVA. On this basis, we determine the estimated net subsidy from this program to be 3.54 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

8. ECSC Article 56 Redeployment Aid

Pursuant to Article 56(2)(b) of the ECSC Treaty, redeployment assistance is provided to workers affected by the restructuring of the coal and steel industries in the ECSC member states. The assistance consists of the following types of grants: (1) Income support grants for workers affected by unemployment, re-employment at a lower salary or early retirement; (2) grants to enable companies to continue paying workers who have been laid off temporarily; (3) vocational training grants; and (4) resettlement grants. According to the EC, Article 56 redeployment aid was disbursed to ILVA's workers in the POI for training, early retirement, and unemployment.

The Article 56 redeployment grants, which are disbursed to the member states, are paid from the European Commission's operational budget for the ECSC steel program. This budget is funded by (1) levies imposed on coal and steel producers in the member countries; (2) income from ECSC's investments; (3) guarantee fees and fines paid to the ECSC; and (4) interest received from companies that have obtained loans from the ECSC.

Because the ECSC contribution under Article 56 is sourced from producer

levies, we find the ECSC portion of such payments to be not countervailable (see Certain Steel at 37336). However, according to the EC's response, the Commission's decision to grant readaptation aid is contingent upon a matching contribution from the member state. We further found that member state contributions are countervailable to the extent that they are specific and relieve a company of an obligation it would otherwise incur.

As with the early retirement benefits described above, the GOI has claimed that ILVA had no obligation to provide the types of worker assistance described under Article 56. With respect to vocational training grants, we have no evidence to refute this claim. Therefore, we preliminarily determine that any vocational training grants funded by the GOI in conjunction with Article 56 are not countervailable. However, for reasons explained under the "Early Retirement" section, above, we find that ILVA was relieved of obligations with respect to unemployment and early retirement payments. Therefore, GOI contributions for these purposes under Article 56(2)(b) provide a countervailable benefit to ILVA.

In the General Issues Appendix to Certain Steel, we listed early retirement and worker assistance as programs which typically provide recurring benefits. We have, therefore, treated the Article 56 redeployment aid as a recurring grant.

ILVA has stated that because payments under Article 56 go directly from the GOI to the workers, the company has no records of the amount paid to the workers under this program. The information provided by the GOI on the amount of its contribution is not clear from the GOI response. However, we have obtained from the EC the amount that the ECSC paid to ILVA's workers in the POI under Article 56. As BIA, we have assumed that the GOI's contribution was equal to the payment made by the ECSC. (See also Certain Steel at 37336.) We divided this amount by the 1992 sales made by ILVA S.p.A. On this basis, we determine the estimated net subsidy from this program to be 1.27 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

9. Urban Redevelopment Financing Under Law 181/89

Urban redevelopment financing is provided to fund re-industrialization projects and to alleviate unemployment in areas affected by the crisis in the steel sector. With regard to the re-industrialization projects, respondents have stated that the urban redevelopment financing provided to ILVA did not involve or affect the manufacture of steel, specifically not the production of the subject merchandise.

With respect to the benefits provided to laid-off employees, the response indicates that Law 181/89 provided early retirement measures for steel workers.

This program provided benefits to priority areas hit by the steel crisis. Thus, we preliminarily determine that assistance under this program is provided on a regional basis and is, therefore, limited to a group of industries (Certain Steel at 37332). Therefore, the Department preliminarily determines that early retirement payments made to ILVA under Law 181/89 provide countervailable benefits.

ILVA has not provided any amounts received under this program, nor has ILVA indicated whether funds under this program were received in the form of loans or grants. As BIA, the Department has used the amount listed in ILVA's 1992 Annual Report. In the General Issues Appendix (at 37226), we listed early retirement programs as typically providing recurring benefits. We have, therefore, treated benefits received by ILVA under this program as a recurring grant.

To determine the benefit under this program, we divided the amount received during the POI by ILVA's 1992 sales. On this basis, we determine the estimated net subsidy from this program to be .11 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

10. ECSC Article 54 Loans

Under Article 54 of the 1951 ECSC Treaty, the European Commission can provide loans directly to iron and steel companies for modernization and the purchase of new equipment. The loans finance up to 50 percent of an investment project. The remaining financing needs must be met from other sources. The Article 54 loan program is financed by loans taken by the Commission, which are then re-lent to iron and steel companies in the member states at a slightly higher interest rate than that at which the Commission obtained them.

ILVA had outstanding Article 54 loans in the POI. These loans, which were originally received by Terni, were transferred to ILVA as part of the 1988 partial transfer of Terni's assets and liabilities.

We preliminarily determine that this program is limited to the iron and steel industry. Terni received a total of four Article 54 loans, two of which were denominated in U.S. dollars and two in European Currency Units ("ECU"). To determine whether the loans were provided on terms inconsistent with commercial considerations, we used the following benchmark interest rates. For the U.S. dollar loan obtained in one of the years in which Terni has been found to be uncreditworthy, we used, as a benchmark interest rate, the highest interest rate on long-term fixed-rate U.S. dollar loans obtained in the United States, as reported by the Federal Reserve. To this interest rate, we added a premium equivalent to 12 percent of the U.S. prime rate in that year. For the other U.S. dollar loan, which was obtained in a year for which we have not made an uncreditworthiness determination, we used the average interest rate on long-term fixed-rate U.S. dollar loans obtained in the United States, as reported by the Federal Reserve.

We have found Terni to be uncreditworthy in both the years it obtained the ECU loans. For these loans, we were unable to find the highest interest rate charged on long-term fixed-rate ECU loans. Instead, we used as the benchmark interest rate, the interest rate paid on 5–7 year ECU-denominated bonds, as reported in an EC publication, plus a risk premium.

Because the interest rates paid on all the Article 54 loans were below the benchmark interest rates, the Department preliminarily determines that loans provided under this program are countervailable. We calculated the benefit using our standard long-term loan methodology. We then divided the benefit allocated to the POI by the 1992 sales made by the Terni division of ILVA. On this basis, we determine the estimated net subsidy from this program to be .09 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Government Loan Guarantees

Finsider guaranteed certain loans taken out by Terni. Terni paid Finsider guarantee fees in the form of a one-time payment of 0.2 percent of the loan amount. According to ILVA's response, these fees were equal to the cost of commercially provided guarantees. Therefore, the Department preliminarily determines that the Finsider loan guarantees were not provided on terms inconsistent with commercial considerations and, thus, not countervailable.

B. European Social Fund ("ESF") Grants

The ESF was established by the 1957 European Economic Community Treaty to increase employment and help raise worker living standards.

We found in Certain Steel that the ESF receives its funds from the EC's general budget whose main revenue sources are customs duties, agricultural levies, value-added taxes collected by the member states, and other member state contributions.

The member states are responsible for selecting the projects to be funded by the EC. The EC then disburses the grants to the member states which manage the funds and implement the projects. According to the EC, ESF grants are available to (1) people over 25 who have been unemployed for more than 12 months; (2) people under 25 who have reached the minimum school-leaving age and who are seeking a job; and (3) certain workers in rural areas and regions characterized by industrial decline or lagging development.

The GOI has stated that the ESF grants received by Italy have been used for vocational training. Certain regions in the South are also eligible for private sector re-entry and retraining schemes. Since 1990, the vocational training grants have been available to unemployed youths and long-term unemployed adults all over Italy, according to the GOI. Before 1990, however, the GOI gave preference to certain regions in Italy.

In Certain Steel, we found that a preference was given to the southern region of Italy in the distribution of benefits. Therefore, we determined that the program was specific because benefits were provided on a regional basis (see Certain Steel, at 37335). However, based on the EC's response in this investigation, it appears that all of the regions in Italy have received ESF funds. Therefore, we preliminarily determine that this program is not regionally specific and therefore, not limited to a specific enterprise or industry, or group of enterprises or industries. Furthermore, we note that to the extent there is a regional preference (i.e., southern Italy) in the distribution of ESF benefits, it has not resulted in a countervailable benefit to the production of the subject merchandise, which is produced in northern Italy.

C. Personnel Retraining Grants under Law 675/77

The provision for retraining grants under Law 675/77 went into effect in 1980, but the program was terminated in 1988 due to lack of funds, according to the response. The purpose of the program was to retrain workers to use new manufacturing technologies in companies undergoing reconstruction and reconversion. The GOI has stated that Italian companies have no legal obligation to retrain their workers and that the program, therefore, does not provide relief from such obligations. We have no evidence to refute this claim. Therefore, we preliminarily determine that benefits under this program are not countervailable.

III. Programs Which Did Not Benefit the Subject Merchandise in the POI

The Department preliminarily determines that the following programs did not benefit the subject merchandise in the POI:

A. Loans under the following programs were not outstanding in the POI, according to the response.

1. Interest Subsidies under Law 617/81
2. Financing under Law 464/72

B. The following export loans were not used for exports to the United States, according to the response.

Subsidized Export Financing Under Law 227/77

C. The following programs were directed to the South of Italy. Since production of the subject merchandise takes place outside the South, the Department preliminarily determines that countervailable benefits under these programs were tied to products outside the scope of this investigation.

1. Law 675/77 Capital Grants
2. Reductions of the Value Added Tax ("VAT") under Law 675/77
3. Interest Contributions under the Sabatini Law (Law 1329/65)
4. Social Security Exemptions
5. ILOR and IRPEG Exemptions

D. Aid Under the National Research Plan

Aid under the National Research Plan is administered under Law 46/82. In 1985, the Ministry for University, Technology and Scientific Research assigned 19 billion lire to Terni under this plan. The purpose of this plan involves basic research regarding the development of steel products to be employed in the energy and chemical fields. The research funds cover costs of personnel assigned to specific research projects in research laboratories. According to the GOI, the research under this plan was contracted out to Terni as the result of a competitive bidding process.

In order to receive funds under this plan, Terni and its subcontractors had to provide to the Ministry a report for each project under the plan. In 1988, prior to presentation of the report, Terni received an advance payment in the amount of 20% of the total in order to cover its first expenses of the research program. Since that time, Terni has submitted interim reports of its progress on the particular projects and, therefore, has received a portion of the funds to which it is entitled. When the work is completed, a report will be submitted to the Ministry. At that time, the Ministry will determine whether to approve the final disbursement to ILVA.

According to Article 11 of Law 46/82, the results of the research under this program belong to the state and may only be assigned to a company for valuable consideration. According to the GOI, the rights to the results of this project have not yet been assigned. Therefore, because ILVA currently has no rights to the research results, the Department preliminarily finds that ILVA received no benefits under this program.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of electrical steel from Italy, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Electrical Steel

Country-Wide *Ad Valorem* Rate 23.14 percent

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the

Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on Monday, March 24, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 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.

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 addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than March 16, 1994. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 23, 1994. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 25, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–2241 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–001]

Cotton Sheeting and Sateen From Peru; Intent To Revoke Countervailing Duty Order

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

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru. Domestic interested parties who object to this revocation must submit their comments in writing not later than 30 days from the publication date of this notice.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce (the Department) published a countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than 30 days after the publication date of this notice, domestic interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: January 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–2240 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 012694A]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Tilefish Industry Advisory Subcommittee will hold a public meeting on February 8, 1994, at the Sheraton Inn, NJ 18 and Eggers Street (at NJ Turnpike Exit 9), East Brunswick, NJ; telephone: (908) 828–6900. The meeting will begin at 9 a.m. and continue until 3 p.m.

The main objective of this meeting is to review the tilefish stock assessment. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: January 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–2231 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 012694B]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (Committee), will meet on February 9, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., room 2079, Building 4, Seattle, WA.

The meeting will begin at 9 a.m. in room 2039, Building 4.

The agenda includes the following:

(1) Election of a Chairman and a Vice Chairman;
(2) Discussion of Bering Sea shellfish issues—
  (a) Pre-season time limits for tank inspections,
  (b) Post-season deadlines for crab vessels to be alongside processors,
  (c) King and Tanner crab pot definitions,
  (d) Definition of hair crab pots, and
  (e) Pot limits for the Adak longline brown crab fishery and the red king crab fishery;
(3) Formulation of recommendations on these issues for both the North Pacific Fishery Management Council and the Alaska Board of Fisheries.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, on (907) 271–2809, at least 5 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 3901 Leary Way, NW., suite 6, Seattle, WA 98107; telephone (206) 547–7560.

Dated: January 26, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–2232 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 012694C]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Sacramento River Fall Chinook Review Team will meet on February 10, 1994, in the Main Conference Room of the Region 2 Headquarters of the California Department of Fish and Game, Rancho Cordova, CA. The meeting will begin at 9:00 a.m.

The purpose of the meeting is to examine the causes that have led to a failure in meeting spawning escapement objectives for naturally produced Sacramento River fall chinook. This stock has been below its spawning escapement goal range (122,000 to 180,00 adult salmon) for the past 3 years. The team report will be reviewed by the Council at its March meeting in Portland, OR.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer on (503) 326–6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon), Pacific Fishery Management Council, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–2233 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–22–P

National Marine Fisheries Service

[I.D. 012694D]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Halibut Advisory Subpanel will meet on February 15–16, 1994, at the Metro Center third floor conference room, 2000 SW. First Avenue, Portland, OR. The meeting will begin on February 15 at 1 p.m. and will run until approximately 5 p.m. The Subpanel will reconvene on February 16 at 8 a.m. and continue until business is completed.

The Subpanel will meet with agency halibut managers to develop alternatives for amending the catch sharing plan for Pacific halibut in Area 2A, beginning in 1995. Recommendations will be submitted to the Pacific Fishery Management Council at its March 8–11, 1994, meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer on (503) 326–6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–2234 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit (P560).

Notice is hereby given that Oregon State University (OSU) has applied in due form for a permit to take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

OSU requests authorization to take adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) in order to investigate the potential effects of climate change on thermal complexity and biotic integrity of streams. Emphasis will be placed on the seasonal intrusion of non-native coolwater and warmwater fish species into the historic habitats of native salmonids, including Snake River spring/summer chinook salmon.

OSU proposes to capture, handle, release, and snorkel near juvenile Snake River spring/summer chinook salmon. Adult Snake River spring/summer chinook salmon would possibly be disturbed during these activities. OSU requests authorization for this research through September 30, 1995.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the applicant and do not necessarily

reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: January 24, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 94–2251 Filed 1–31–94; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels, Re-instatement of Export Visa and Certification Requirements, and Establishment of Manufacturer's Identification Requirement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Haiti

January 26, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels, re-instating export visa and certification requirements, and establishing manufacturer's identification requirement.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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) 927–5850. 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 December 30, 1993 between the Governments of the United States and Haiti, agreement was reached to amend and extend their current bilateral textile agreement for the period beginning on January 1, 1994 and extending through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish restraint limits and guaranteed access levels (GALs) for 1994. Also, the Commissioner of Customs is being directed to re-instate visa and certification requirements for all textile products which are produced or manufactured in Haiti and exported from Haiti on or after February 1, 1994. Goods exported from Haiti during the period February 1, 1994 through February 28, 1994 shall not be denied entry for lack of a visa or certification. Goods exported from Haiti on or after March 1, 1994 shall be denied entry if not accompanied by an appropriate export visa or certification.

Shipments of GAL qualifying textile products which are re-exported to the United States from Haiti on or after February 1, 1994 shall be charged to the appropriate guaranteed access level. Shipments of these products which are exported from Haiti prior to February 1, 1994 shall be charged to the existing quota for that category.

Effective on February 1, 1994, the existing visa arrangement between the Governments of the United States and Haiti shall be amended to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be placed on the textile export document. This information shall appear on the export document prior to export from Haiti. However, for goods exported during the period February 1, 1994 through February 28, 1994, the importer may type this information on the front of the original export document.

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 56 FR 51201, published on October 10, 1991.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6053, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

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.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the monitoring directives issued to you on December 3, 1992 and December 8, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. You are directed to retain monitoring data for the period beginning on January 1, 1994 and apply these charges to the limits established in this directive.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated December 30, 1993, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Haiti and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
331	504,990 dozen pairs.
340/640	504,990 dozen.
341/641	484,791 dozen.
347/348	568,114 dozen.
350	69,436 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

This directive cancels and supersedes the directive issued to you on October 7, 1991, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you, until further notice, to waive export visa and certification requirements for textile products, produced or manufactured in Haiti and exported from Haiti.

Effective on February 1, 1994, you are directed to require a visa or certification for all shipments of textile products, produced or manufactured in Haiti and exported from Haiti on or after February 1, 1994. Goods exported from Haiti during the period February 1, 1994 through February 28, 1994 shall not be denied entry for lack of a visa or certification. Goods exported from Haiti on or after March 1, 1994 shall be denied entry if not accompanied by an appropriate export visa or certification.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), and pursuant to current bilateral textile agreement, as amended, between the Governments of the United States and Haiti, you are directed, effective on February 1, 1994, to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in Haiti from fabric formed and cut in the United States and re-exported to the United States from Haiti during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994. Shipments of these products which are exported from Haiti to the United States prior to February 1, 1994 shall be charged to the existing quota level for that category.

Category	Guaranteed access level
331	500,000 dozen pairs.
340/640	440,000 dozen.
341/641	400,000 dozen.
347/348	800,000 dozen.
350	120,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987, as amended, shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

Effective on February 1, 1994, you are directed to amend the February 19, 1987 directive to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be placed on the textile export document. This information shall appear on the export document prior to export from Haiti. However, for goods exported during the period February 1, 1994 through February 28, 1994, the importer may type this information on the front of the original export document.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–2252 Filed 1–31–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency Cooperative Agreement Revised Procedures

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Cooperative agreements; proposed revised procedures.

SUMMARY: This proposed revised procedure implements title 10, chapter 142, United States Code, as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements to support procurement technical assistance programs established by state and local governments, private nonprofit organizations, Tribal organizations, and Indian-owned economic enterprises. Subpart III of this issuance establishes the proposed administrative procedures to be implemented by DLA to enter into such agreements for this purpose.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Sim Mitchell, Program Manager, Office of Small and Disadvantaged Business Utilization (AQAU), Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, telephone (703) 274–6471.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Department of Defense (DoD) efforts to increase competition in the private sector have been supplemented by many state and local governments and other entities which operate procurement technical assistance (PTA) programs. The DoD PTA Program provides assistance to eligible entities by sharing the cost of establishing new and/or maintaining existing PTA programs. The PTA program is designed to expand the DoD industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security.

The PTA Cooperative Agreement Program was established by the Fiscal Year (FY) 1985 DoD Authorization Act, Public Law 98–525. The Public Law amended title 10, United States Code (USC), by adding chapter 142. Title 10, USC, as amended, continues to authorize the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements with state and local governments, other nonprofit entities, Tribal organizations and Indian economic enterprises (hereafter referred to as eligible entities as defined in Section 3 of this procedure) to establish and conduct PTA programs.

The FY DoD Authorization Act authorized a total of $12 million to support the program during FY 94. Of this total, $600,000 is available for Indian programs only.

Limitations placed on these funds are:

(a) DoD's share of an eligible entity's net program cost (NPC) shall not exceed 50%, unless the eligible entity/recipient proposes to cover a distressed area. If the eligible entity/recipient proposes to cover a distressed area, the DoD share may be increased to an amount not to exceed 75%. In no event shall DoD's share of NPC exceed $150,000 for programs providing less than statewide coverage or $300,000 for programs providing statewide coverage.

(b) For the Indian Program, DoD's share of NPC shall not exceed 75% of $150,000, whichever is less, for programs providing services on a reservation(s) within one Bureau of Indian Affairs (BIA) service area. For programs providing services to 100% of the reservations within one BIA service area and at least 50% of the reservations of at least one additional BIA service area (multi-area coverage), DoD's share of NPC shall not exceed 75% or $300,000, whichever is less.

The purpose of the proposed revised procedure is to make available to all eligible entities the prerequisites, policies and procedures which will govern the award of cooperative agreements by DLA. Also, this procedure establishes the guidelines which will govern the administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a DLA awarded cooperative agreement, DLA has determined that this procedure does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that the proposed cooperative agreement procedure implements policies already published by the Office of management and Budget pursuant to title 31, chapter 63, United States Code, Using Procurement Contracts and Grants and Cooperative Agreements. In addition, DLA cooperative agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts. Therefore, public hearings were not conducted.

II. Other Information

The language contained in the current cooperative agreement procedure limited the period of coverage to the FY 93 Program in that it addressed the FY 93 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposal revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 94 program.

Comments are invited on the procedure. Comments should be submitted to the Defense Logistics Agency, Office of Small and Disadvantaged Business Utilization, ATTN: AQAU, Cameron Station, Alexandria, VA 22304–6100. Comments received after 2 March 1994 may not be considered in formulating revisions to the Procedure.

III. Proposed Revision to DLA Procedure—Cooperative Agreements

3–1 Policy

A. Proposals for cooperative agreements are obtained through the issuance of a Defense Logistics Agency (DLA) solicitation for cooperative agreement proposals, (hereafter referred to as a SCAP). The contents of this procedure shall be incorporated, in whole or in part, into the SCAP to establish administrative requirements to execute and administer DLA awarded cooperative agreements. The SCAP may include additional administrative requirements that are not included herein.

B. The SCAP is issued by the PTA Cooperative Agreement Program Manager's office in the DLA Office of Small and Disadvantaged Business Utilization. The Program Manager's office will also respond to any SCAP questions that may arise.

C. The SCAP will become part of the applicant's offer upon acceptance of its proposal.

D. Only one proposal will be accepted from a single eligible entity.

E. Proposals will not be accepted from applicants which apply as co-equal partners or joint ventures. Only one organization can take the lead and primary responsibility for the proposed program. In other words,only one eligible entity can submit a proposal.

F. Proposals will not be accepted from applicants who propose to provide less than county or equivalent (i.e. parish, borough) (hereafter referred to as county or equivalent) coverage. For example, if an applicant proposes to service any part of a county or equivalent, the applicant must service the entire county or equivalent.

G. Cooperative agreements will be awarded on a competitive basis consistent with the SCAP. It is DLA's policy to encourage fair and open competition when awarding cooperative agreements.

H. Letters of support and recommendation from Members of Congress will not be considered in the evaluation and selection of proposals to receive cooperative agreement awards.

I. The SCAP shall be given the widest practical dissemination. It will be provided to all known eligible entities and to those that request copies after its issuance. All eligible entities interested in submitting a proposal under the SCAP will be invited to participate in a preproposal conference. Preproposal conferences will be held at the locations designated in the SCAP, approximately 30 calendar days prior to the SCAP's closing date.

J. The SCAP shall not be considered to be an offer made by DoD. It will not obligate DoD to make any awards under this Program.

K. The eligible entity is bound to perform the services described in its offer if selected for an award, and upon its proposal being incorporated into the cooperative agreement award document.

L. Cooperative agreement recipients will have, on file, policies and procedures applicable to the PTA center's management control and financial control systems.

M. DoD is not responsible for any monies expended or expenses incurred by applicants prior to the award of a cost sharing cooperative agreement. However, actual expenses incurred by FY 94 award recipients to participate in a FY 94 preproposal and/or postaward training conference may be reimbursed under the FY 94 cooperative agreement award subject to the provisions of the applicable cost principles.

N. The award of a cooperative agreement under this program shall not, in any way, obligate DoD to enter into a contract or give preference for the award of a contract to a business firm which is or becomes a client of a DLA cooperative agreement recipient.

O. Cooperative agreement recipients must give special emphasis to assisting small disadvantaged business (SDB) firms which participate or aspire to participate in DoD prime and subcontracting opportunities. A concerted effort must be made by recipients to identify SDB firms and provide them with marketing and technical assistance, particularly where such firms are referred for assistance by a DoD component, other Federal agencies, and state and/or local governments.

P. Award recipients are not required to obtain or retain private, profit making and/or nonprofit consultants to support the program. Any subcontract costs being proposed for consulting services shall not exceed 10% of the total program cost (TPC) (25% of TPC under the American Indian Program). Proposals containing subcontracting costs for consultant services in excess of 10% of TPC (25% of TPC under the American Indian Program), will be rejected.

Q. Reasonable quantities of government publications, such as "Selling to the Military," may be furnished to award recipients at no cost, subject to availability. All requests for such publications must be submitted to the cognizant Deputy for Small Business.

R. For the purpose of executing cooperative agreements, authority is delegated to the Grants Officer.

S. Each cooperative agreement recipient's area of performance will be limited to the county(ies) or equivalent specified in its cooperative agreement award, including modifications thereto. For the American Indian Program, the recipient's area of performance will be limited to the reservation(s) specified in its cooperative agreement. Recipients may voluntarily service clients outside their area of performance provided that the client's location is not being serviced by another PTA recipient.

T. The PTA center's program manager/director must be employed by the PTA center on a full-time (100%) basis and salary must be charged to the PTA program.

U. A minimum of 25% of the PTA program's requirements must be performed by the recipient. The remaining 75% of the PTA program's requirements may be performed by either the recipient and/or subrecipients, as applicable.

V. To be considered during the evaluation process, part-time PTA program employees must devote a minimum of 3 calendar months per year of their time to the PTA program. Time spent may be performed continuously or incrementally during the 12 month period.

W. Cooperative agreement recipients are required to provide information to their clients relating to the objectives of the Government's electronic commerce initiative which are as follows:

1. Exchange procurement information—such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents electronically

between the private sector and the Federal government to the maximum extent practical;

2. Provide businesses, including small, small disadvantaged, and women-owned businesses with greater access to Federal procurement opportunities;

3. Ensure that potential suppliers are provided simplified access to the Federal government's electronic commerce system;

4. Employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data. (These formats are the ANSI ASC X–12 and UNEDIFACT formats.)

5. Use agency and industry systems and networks to enable the Government and potential suppliers to exchange information and access Federal Procurement data.

X. For the American Indian Program, if a tribal organization is to perform services benefiting other Indian tribe(s), written approval must be obtained by the eligible entry from each Indian Tribe to be serviced. Approval will consist of a written statement (signed by a responsible official authorized to legally bind the Indian tribe to be serviced) indicating that the Indian tribe approves and agrees to accept the services to be provided by the tribal organization.

3–2 Scope

This procedure implements title 10, chapter 142, United States Code, as amended, and establishes procedure and guidelines for the award and administration of cost sharing cooperative agreements entered into between DLA and eligible entities. Under these agreements, financial assistance provided by DoD to recipients will cover the DoD share of the cost of establishing new and/or maintaining existing PTA programs which furnish PTA to business entities.

3–3 Definitions

The following definitions apply for the purpose of this procedure.

A. *Act.* The enabling legislation that authorizes the establishment and continuation of the PTA Cooperative Agreement Program each FY.

B. *Agency.* A field office, of one of the twelve service areas, as published by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior.

C. *American National Standards Institute (ANSI) Standard.* A document published by ANSI that has been approved through the consensus process of public announcement and review. Each of these standards must have been developed by an ANSI Committee and must be revisited by that Committee within 5 years for update.

D. *Civil jurisdiction.* All cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in four States (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

E. *Client.* A recognized business entity, including a corporation, partnership, or sole proprietorship, organized for profit or nonprofit, which is small or other than small, that has the potential or is seeking to market its goods and/or services to DoD, other Federal agencies, and state and/or local governments.

F. *Consultant services.* Marketing and technical assistance offered directly to cooperative agreement recipients by private nonprofit and/or profit making individuals, organizations or otherwise qualified business entities.

G. *Cooperative agreement.* A binding legal instrument reflecting a relationship between DLA and the recipient of a cooperative agreement when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring property or services for the direct benefit or use of the United States Government. Substantial involvement is expected between DLA and the recipient when carrying out the activity contemplated in the agreement.

H. *Cooperative agreement offer/application/proposal.* An eligible entity's response to the SCAP describing its existing or planned PTA program.

I. *Cooperative agreement award recipient.* An organization receiving financial assistance directly from DLA to carry out a PTA program. The organization is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document.

J. *Cost matching or sharing.* The portion of project or program costs not borne by the Federal Government.

K. *Counseling session.* A documented counseling session (telephone call, correspondence, or personal discussion) held with a client, where professional guidance is provided to assist the client in marketing its products and/or services to DoD, other Federal agencies, and state and local governments. This includes, but is not limited to, providing advice and assistance regarding marketing opportunities or technical assistance in areas such as:

(1) Matching the client's products and/or services with that being purchased by DoD, other Federal agencies, and state and local governments;

(2) Assisting with understanding specifications;

(3) Preparing applications to be placed on solicitation mailing lists;

(4) Preparing offers;

(5) Providing postaward assistance in areas such as production, quality system requirements, finance, engineering, transportation and packaging; and

(6) Providing information to business firms on the Mentor-Protege Pilot Program; Defense Conversion, Reinvestment and Transition Assistance Act of 1992; the Metric Conversion Act; Electronic Commerce/Electronic Data Interchange (EC/EDI); and Total Quality Management (TQM).

The distribution of publications or specifications, or simply referring clients to another source for advice or assistance, is not considered to be a counseling session.

L. *Direct cost.* Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

M. *Distressed area.* The geographic area to be serviced by an eligible entity in providing PTA to business firms physically located within an area that:

(1) Has a per capital income of 80% or less of that State's average; or

(2) Has an unemployment rate that is one percent greater than the national average for the most recent 24-month period in which statistics are available.

N. *Duplicate coverage.* A situation caused by two or more applicants offering to provide marketing and technical assistance to clients located within the same county(ies) or equivalent within the same geographic area.

O. *Electronic Commerce (EC).* The conduct of administration, finance, logistics, procurement and transportation between the Government and private industry using an integrated automated information environment to interchange business transactions.

P. *Electronic Data Interchange (EDI).* The computer-to-computer electronic transfer of business transaction information in a public standard formatted messages through use of a Value Added Network (VAN).

Q. *Eligible entities.*

(1) Organizations qualifying to submit a proposal under the general PTA program, including:

(a) *State government.* Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, exclusive of local governments. The term does not include any public and Indian housing agency under the U.S. Housing Act of 1937.

(b) *Local government.* A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity (such as regional planning agencies), or any agency or instrumentality of a local government. The term does not include institutions of higher education and hospitals.

(c) *Private, nonprofit organizations.* Any corporation, trust, foundation, or institution which is exempt or entitled to exemption under section 501(c)(3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which insure the benefit of any private shareholder or individual.

(2) Organizations qualifying to submit a proposal under the American Indian program, including:

(a) *Indian economic enterprise.* Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(b) *Tribal organization.* The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

R. *Existing program.* Any PTA program that had a cooperative agreement award with DLA for any two or more years subsequent to FY 88.

S. *Federal funds authorized.* The total amount of Federal funds obligated by the Federal government for use by the recipient.

T. *Follow-up counseling session.* A documented counseling session (telephone call, correspondence, or personal discussion) held with a client subsequent to the initial counseling session.

U. *Grants officer (GO)/Administrative Grants Officer (AGO).* An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

V. *Indian.* Any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the BIA and any "Native" as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

W. *Indian tribe.* Any Indian tribe, band, group, pueblo, or community, including Native villages and Native groups (including corporations organized by Kenai, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act [43 U.S.C. Section 1601 et seq.], which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

X. *Indirect cost.* Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. An indirect cost is not subject to treatment as a direct cost.

Y. *Initial counseling session.* The first documented session (telephone call, correspondence, or personal discussion) where professional guidance is provided to a business firm to assist in marketing its products and/or services to DoD, other Federal agencies, and state and/or local governments. The initial counseling session may determine that the business firm has no potential to do business with a governmental agency.

Z. *In-kind contributions/donations.* The value of noncash contributions provided by the eligible entity and non-Federal parties to the PTA Program. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions/donations. In-kind contributions/donations may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

AA. *Integrated automated information environment.* Computer-to-computer exchange of public standard formatted messages through use of a VAN.

AB. *Multi-area coverage.* A PTA program that proposes to service 100 percent of the reservations located within one BIA service area and at least 50 percent of the reservations located within another BIA service area. The list of areas administered as Indian Reservations, as compiled by the BIA will be included in the SCAP to benefit American Indians.

AC. *Net program cost.* The total program cost (TPC) (including all authorized sources) less any program income and/or other Federal funds not authorized to be shared.

AD. *New start.* An eligible entity that is not an existing program (see above for definition of an existing program).

AE. *Other Federal funds.* Federal funds provided by Federal agencies other than the DoD PTA Cooperative Agreement Program. When authorized by statute, Federal funds received from other sources, including grants, may be used as cost sharing and/or cost matching contributions.

AF. *Per capita income.* The estimated average amount per person of total money income received during a calendar year for all persons residing in a given political jurisdiction as published by the U.S. Department of Commerce, Bureau of the Census.

AG. *Prior approval.* A written approval by the Grants Officer/Administrative Grants Officer evidencing prior consent, as required by the cooperative agreement award document.

AH. *Procurement technical assistance (PTA) cooperative agreement program.* A program organized to generate employment and improve the general economy of a locality by assisting business firms in obtaining and performing under DoD, other Federal agency, and state and local government contracts.

AI. *Program income.* Gross income received by the recipient or subrecipient from cooperative agreement supported activities. Program income includes fees from services performed, or from the use or rental of property acquired with cooperative agreement funds. Except as otherwise provided in statute or regulations of the Federal agency, program income does not include interest earned on advances of grant or subgrant funds, or rebates, credits, discounts, refunds, etc., or interest earned on any of them.

AJ. *Public Standard Format.* A data exchange format which includes the ANSI format ASC X–12 and/or the United Nations Electronic Data Interchange for Administration,

Commerce and Transport (UNEDIFACT).

AK. *Reservation.* Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C., Section 1601 et seq.].

AL. *Service area.* Any one of twelve area offices, as published by the U.S. Department of the Interior, BIA, to include: Aberdeen, Albuquerque, Anardako, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland and Sacramento.

AM. *Solicitation for cooperative agreement proposals (SCAP).* A document issued by DLA containing provisions and evaluation factors applicable to all applicants which apply for a PTA cooperative agreement.

AN. *Statewide coverage.* A PTA program which proposes to service at least 50% of a State's counties (or equivalent (i.e., parishes, boroughs)) and 75% of a State's labor force.

AO. *Subrecipient.* The legal entity to which a subagreement is made and which is accountable to the recipient of the cooperative agreement for the use of the PTA program funds provided.

AP. *Third party in-kind contributions.* The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

AQ. *Total program cost (TPC).* All allowable costs as set forth in OMB Circular Nos. A–21, A–87 and A–122, as applicable. All funds and in-kind contributions/donations received from all sources, including their parties, as a result of operating the program.

AR. *Total quality management (TQM).* Total quality is a philosophy of management which harnesses the creativity of all employees (management and non-management) in a structured approach to continuously improving the processes by which products or services are produced to meet customers' requirements and expectations. It is an integrated system of management with recognizable components which: acknowledges that the customer(s) define quality in product or service; focuses all of the efforts of the enterprise on understanding and meeting or exceeding customer needs; employs proven tools and techniques to map and measure processes so that variation can be reduced, defects can be prevented, and problems can be solved; and involves and values everyone.

AS. *Value added network (VAN).* A commercial telecommunications service provider which passes electronic commerce traffic between a government entity and a commercial, private-sector vendor.

3–4. Program Purpose and Requirements

A. The purpose of the PTA Program is to generate employment and improve the general economy of a locality by assisting business firms in obtaining and performing under Federal, state and local government contracts.

B. Requirements.

1. *Program requirements.*

a. Have resources necessary to implement its program.

b. Assist business firms with increasing the number of prime and subcontract awards received.

c. Assist business firms by providing marketing and technical assistance in selling their goods and services to DoD, other Federal agencies, and state and local governments.

d. Provide business firms with information on the Mentor-Protege Pilot Program; Defense Conversion, Reinvestment and Transition Assistance Act of 1992; The Metric Conversion Act; EC/EDI; and TQM.

2. *Service requirements.* A comprehensive PTA program should include, but should not be limited to, the following:

a. *Procurement Outreach Program.* Plan, procedures and resources to make the business community aware of the PTA Cooperative Agreement Program, what assistance it offers and the requirements for a business firm to become a client.

b. *Personnel.* Personnel qualified to counsel and to advise business firms/clients regarding PTA Cooperative Agreement Program requirements, as they apply to both prime and subcontracts. Personnel qualifications should relate to the program being offered by the applicant/recipient. Some areas of consideration are:

(1) Procurement policies and procedures;

(2) Marketing techniques and strategies;

(3) Pricing policies and procedures;

(4) Preaward procedures;

(5) Postaward contract administration;

(6) Quality assurance;

(7) Production and manufacturing;

(8) Financing;

(9) Subcontracting requirements;

(10) Bid and proposal preparation;

(11) Electronic Commerce/Electric Data Interchange; and

(12) Specialized acquisition requirements for such areas as construction, research and development, and data processing.

c. *Counseling program.* Plan, procedures and resources for counseling potential or existing clients regarding marketing their goods and/or services to DoD, other Federal agencies, and state and local governments; the publications to be used in such efforts; identification of information to be provided to clients during counseling sessions; and the procedures for documenting counseling efforts.

d. *Marketing opportunity program.* Plan, procedures and resources for identifying sources and opportunities for clients to market their goods and/or services to DoD, other Federal agencies, and state and local governments.

e. *Client information program.* Plan, procedures and resources for educating clients concerning each of the following: Mentor-Protege Pilot Program; Defense Conversion, Reinvestment and Transition Assistance Act of 1992; The Metric Conversion Act; and Total Quality Management (TQM).

f. *Electronic Data Interchange/Electronic Commerce (EDI/EC) Program.* Plan, procedures and resources to assist clients with understanding the objectives of the Government's EC/EDI initiatives. EC/EDI uses value added networks (VAN) to pass data electronically between the government procurement activity and the industry trading partner (vendor). The government procurement activity is connected to a VAN which is also connected to a vendor. The objectives of the Government's EC/EDI initiatives are as follows:

(1) Exchange procurement information such as: solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents electronically between the private sector and the Federal government to the maximum extent practicable;

(2) Provide businesses, including small, small disadvantaged, and women-owned businesses with greater access to Federal procurement opportunities;

(3) Ensure that potential suppliers are provided simplified access to the Federal government's electronic commerce system;

(4) Employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data (These formats are the ANSI ASC X–12 and UNEDIFACT formats); and

(5) Use agency and industry systems and networks to enable the Government

and potential suppliers to exchange information and Federal procurement data.

g. *Postaward Assistance Program.* Plan, procedures and resources for educating clients concerning contract postaward functions in areas such as: production, quality systems, finance, transportation, packaging, subcontracting, etc.

h. *Contract Award Verification Program.* Plan, procedures and resources for collecting, documenting, and reporting prime and subcontract awards received by clients due to assistance provided by the award recipient. The recipient must be capable of segregating data by origin of the award (DoD, other Federal agency, state or local government) and type of business receiving the award (small business or other than small business). In addition, award recipients are required to have on file for their clients for each reported award, the following:

(1) The number and dollar value for prime and subcontract awards received by clients;

(2) A signed statement from the client confirming that the prime and/or subcontract award was obtained as a result of the assistance provided by the PTA center; and

(3) A means of validating the data.

3. *Fees and service charges.* If the applicant plans to charge business firms/clients a fee or service charge, accounting procedures and details as to the amount and basis for the fee or service charge must be described.

3–5 Procedures

A. Grants Officer (GO) as used herein refers to the GO assigned to the Program Manager's office, HQ DLA Office of Small and Disadvantaged Business Utilization.

B. The Program Manager's office develops and prepares the SCAP and evaluation criteria.

C. The DLA PTA Cooperative Agreement Policy Committee (Policy Committee) approves the SCAP and evaluation criteria prior to its issuance. The Policy Committee is comprised of representatives from the HQ, DLA, Directorates of General Counsel, Acquisition (Offices of Small and Disadvantaged Business Utilization, Contract Management and Procurement), Corporate Administration (Office of Congressional Affairs), and Comptroller, The Director, Office of Small and Disadvantaged Business Utilization serves as the Policy Committee Chairman.

D. The Policy Committee is the final administrative appeal authority for disputes and protests.

E. Proposals and revisions received after the deadlines for receipt of proposals (to be specified in the SCAP) will not be evaluated unless they are determined acceptable based upon the following criteria.

(a) Acceptable evidence to support an otherwise late proposal or revised proposal received after the closing time and date shall consist of:

1. An original U.S. Post Office receipt for registered or certified mail showing date of mailing not later than five calendar days before the date specified for receipt of proposals and revisions; or

2. When sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. The postmark date must be two working days prior to the date specified for receipt of proposals. The term working days excludes weekends and Federal holidays. Applicants should request the postal clerk to place a legible hand cancellation "bull's-eye" postmark on both the receipt and envelope or wrapper.

(b) If the proposal or revision is hand-delivered, the specific time and delivery date shall be supported by a receipt given by the Program Manager's office.

F. The evaluation of proposals submitted in response to the SCAP and the selection of award recipients shall be conducted as detailed below:

(1) *Intitial evaluation.* The GO performs an evaluation of each proposal received to determine if the proposal:

(a) Provides county-wide or equivalent coverage;

(b) Contains sufficient technical, cost and other information;

(c) Has been signed by a responsible official authorized to bind the eligible entity; and

(d) Generally meets all requirements of the SCAP. If a proposal is removed from further consideration for an award by the GO, the applicant will be promptly notified of the reason(s) for removal. The applicant's proposal will be retained with other unsuccessful proposals by the GO.

(2) *Minor informalities and mistakes.* The GO shall examine all proposals for mistakes.

(a) The GO shall provide an eligible entity the opportunity to cure any deficiency resulting from a minor informality or irregularity contained in the offer or waive the deficiency, whichever is to the advantage to the Government. A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in an offer or variation of an offer from the exact requirements of the solicitation that can be corrected or waived without being prejudicial to other offerors. The defect or variation is immaterial when the effect on program quality is negligible when contrasted with the program's total cost. (Two examples or minor informalities include the failure of the eligible entity to: (1) Return the required number of copies of its proposal; and (2) Execute the certifications required by the SCAP clauses).

(b) In case of apparent mistakes and in cases where the GO has reason to believe that a mistake may have been made, the GO shall request verification from the entity that the offer "should read as stated" calling attention to the suspected mistake. Any clerical mistake, apparent in the offer, may be corrected by the GO. (Examples of apparent mistakes are: (1) Obvious misplacement of a decimal point; (2) incorrect transposition of numbers; and (3) obvious mistake in identifying the program type (existing versus new start)). The GO shall obtain from the eligible entity a written verification of the offer intended.

(c) Correction of a mistake by the GO shall be effected by attaching the verification to the original offer. The GO shall not make corrections on the entity's proposal. Corrections shall be restated in the cooperative agreement award document, if the entity receives an award.

(d) If an eligible entity requests permission to correct a mistake, including those identified by the GO during their review and clear and convincing evidence establishes the existence of the mistake, the GO may make a determination permitting the eligible entity to correct the mistake. If this correction would result in displacing one or more eligible entities that would otherwise rank higher, such a determination shall not be made unless the existence of the mistake and the proposed information actually intended are ascertained substantially from the proposal itself.

(3) The GO will review and verify the accuracy of the applicant's program status stated on block 8, "Type of Application" of the Standard Form (SF) 424. If the GO considers the proposal status misclassified, the matter will be reviewed with the applicant. If there is disagreement, the GO's decision regarding the program classification is final and is not subject to further review.

(4) If the GO determines that supporting documentation does not substantiate the applicant's proposed distressed area status (where greater than 50% funding as the DoD share is requested), the application will be disqualified and not be given further review or consideration for an award. The proposal will be retained with other unsuccessful applicants by the GO.

(5) The GO will forward all proposals which pass the initial evaluation phase to the Evaluation Panel. These proposals are then subjected to a comprehensive evaluation by the Evaluation Panel.

(6) *Comprehensive Evaluation.* A specially constituted HQ, DLA, Evaluation Panel comprised of small business specialists, contract management specialists, and other personnel deemed appropriate by the Policy Committee performs the comprehensive evaluation. A member of the HQ DLA Directorate of General Counsel provides legal assistance to the Evaluation Panel, as needed.

The purpose of the comprehensive evaluation is to assess the merits of the proposals to determine which offer the greatest likelihood of achieving the stated program purpose considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. The Evaluation Panel conducts its evaluations in accordance with stated criteria.

(7) *Duplicate coverage.* Proposals that include duplicate coverage will be processed by the GO as follows:

(a) *General Program.*

1. When two or more applicants submit proposals that provide duplicate coverage of the county(ies) or equivalent within the geographic area which the applicant plans to service, selection priority will be given to the proposal that is assigned the highest total points by the Evaluation Panel.

2. To be considered for an award, an applicant's proposal shall not duplicate more than 25%, on an individual or cumulative basis, any of the county(ies) or equivalent proposed by other applicant(s).

3. Only one statewide program will be awarded in a state.

(b) *American Indian Program.*

1. When two or more applicants submit proposals that provide duplicate coverage of the reservation(s) which the applicant plans to service, selection priority will be given to the proposal that is assigned the highest total points by the Evaluation Panel.

2. To be considered for an award, an applicant's proposal shall not duplicate more than 25% on an individual or cumulative basis any of the reservation(s) proposed by other applicant(s).

G. The award recommendations are approved by the Program Manager and executed by the GO.

3–6 Evaluation Factors

A. Proposals received as a result of the SCAP will be grouped as existing programs and new start programs based on the information provided on block 8 of the SF 424, or as determined by the GO.

B. Each group of proposals will be evaluated separately based upon the evaluation factors specified for the group. The SCAP will provide an explanation of each evaluation factor.

C. Proposals will be to be evaluated, and award will be made, without discussions with the applicants (other than discussions conducted for the purpose of minor clarification).

D. The following evaluation factors (which may be subject to change) will be considered:

(1) Existing Program Service Requirements.

(a) Program's past performance and effectiveness, description and development.

1. Past performance and effectiveness.

2. Description.

a. Types and qualifications of personnel.

b. Geographic area(s) the applicant plans to service.

1. The county(ies) or equivalent the applicant plans to service.

2. Level of unemployment in the county(ies) or equivalent the applicant plans to service.

c. Potential number and types of clients the applicant plans to service.

3. Development.

a. Procurement Outreach Program.

b. Counseling Program.

c. Marketing Opportunities Program.

d. Client Information Program.

e. Electronic Commerce/Electronic Data Interchange (EC/EDI) Program.

f. Postaward Assistance Program.

g. Contract Award Verification Program.

(b) Subcontracting for consultant services.

(2) New Start Program Service Requirements.

(a) Program's description and development.

1. Description.

a. Types and qualifications of personnel.

b. Geographic area(s) the applicant plans to service.

1. The county(ies) or equivalent the applicant plans to service.

2. Level of unemployment in the county(ies) or equivalent the applicant plans to service.

c. Potential number and types of clients the applicant plans to service.

2. Development.

a. Procurement Outreach Program.

b. Counseling Program.

c. Marketing Opportunities Program

d. Client Information Program.

e. Electronic Commerce/Electronic Data Interchange (EC/EDI) Program.

f. Postaward Assistance Program.

g. Contract Award Verification Program.

(b) Subcontracting for consultant services.

E. Certain of these evaluation factors will be evaluated based upon stated implementing policy for programs. For example, for the types and qualifications of personnel, applicants and their subagreement applicants will be required to provide a list of professional personnel by name (or the qualification standard if a position is not occupied) along with salary and education information, previous experience (by technical discipline), and the percentage of time assigned or to be assigned to directly performing the program.

F. The amount of subcontracting for consultant services provided directly to cooperative agreement recipients by private nonprofit and/or profit-making individuals, organizations or otherwise qualified business entities is limited to no more than 10% of TPC for both existing programs and new starts (25% of TPC under the American Indian Program). However, in evaluating this factor for existing programs, the smaller the amount of subcontracting for consultant services the greater the weight that will be given. In the case of new starts, subcontracting is not an evaluation factor. New starts are subject only to the 10% limitation (25% limitation under the American Indian Program).

3–7 DoD Funding

A. The FY 94 DoD Authorization Act authorized a total of $12 million to support the PTA program during FY 94. Of this total $600,000 is available for Indian programs only.

B. For the American Indian Program, proposals will be funded to the extent the $600,000 authorized for this program will allow. After selecting the highest ranking proposals for award, any remaining funds, which may be insufficient to fund the total amount of Federal funds requested, may be used to make additional award(s). Thus, an applicant may be offered the opportunity to reduce the amount of Federal funds requested to facilitate receiving an award. Notwithstanding the reduction in the amount of Federal

funds requested, all other terms and conditions of the applicant's proposals must remain unchanged.

3–8 Cost Sharing Limitations

A. The DoD share of NPC shall not exceed 50%, except in a case where an eligible entity meets the criteria for a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

b. In no event shall the DoD share of NPC exceed $150,000 for programs providing less than statewide coverage or $300,000 for programs providing statewide coverage.

C. For the Indian Program, the requested DoD share shall not exceed 75% of NPC or $150,000 for a program providing service on reservation(s) within one BIA service area, or $300,000 for a program providing multi-area coverage.

D. The type and value of third-party in-kind contributions/donations is limited to no more than 25% of TPC.

E. Indirect cost rates used in the proposal are subject to a downward revision only.

3–9 Cost Sharing Criteria

A. Cost contributions may be either direct or indirect costs, provided such costs are otherwise allowable in accordance with the applicable cost principles. Allowable costs which are absorbed by the applicant as its share of costs may not be charged directly or indirectly or may not have been charged in part or in whole to the Federal Government under other contracts, agreements, or grants.

B. The SCAP will require applicants to submit an annualized budget estimate, which may include cash contributions, in-kind contributions/donations, and any other Federal agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program.

C. Program income or other Federal funds, that are not authorized for use by Federal statute, (excluding loan guarantee agreements since these do not provide disbursement of Federal funds) are not acceptable for use as the applicant's matching funds. Inclusion of other Federal funds in the program as part of TPC is subject to authorization by Federal statute and the terms of the instrument containing such funds or written advice obtained from the agency(ies) awarding the Federal funds. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

D. Where distressed funding (greater than 50%) is requested and the civil jurisdiction(s) which the applicant plans to service are both distressed areas and non-distressed areas, two budgets must be submitted based on the anticipated distribution of TPC between these two areas. In addition, the recipient's accounting system must segregate and accumulate costs in each of the two budget areas.

E. Recipients of PTA cooperative agreements are required to maintain records adequate to reflect the nature and extent of their costs and expenditures, and to insure that the required cost participation is achieved. In addition, each state and local government entity that receives Federal funding is required to have audits performed in accordance with the requirements of OMB Circular A–128. Nonprofit organizations and institutions of higher education are required to have audits performed in accordance with the requirements of OMB Circular A–133. Indian economic enterprises (for profit only) will also have an audit performed in accordance with the requirements of OMB Circular A–133. Recipients shall have the audit organization send a copy of all audit reports which pertain to the PTA cooperative agreement directly to the cognizant administration activity.

F. If the applicant charges or plans to charge a fee or service charge for PTA given to clients, or receives any other income as a result of operating the PTA Program, the amount of program income generated must be added to TPC.

G. The recipient may add funds to its program after all program funds are properly expended and before expiration of the cooperative agreement effective period. In the event funds are added to the program, the percent of total cost sharing will not be affected and the funds will not require allocation by object class category. However, total funds expended during the effective period must be reported on the DLA Form 1806, PTA Cooperative Agreement Performance Report. The expenditure of additional funds shall be made in accordance with the applicable cost principles.

H. The following OMB Circulars (most recent issuance) will be used to determine allowable costs in performance of the program:

(1) OMB Circular No. A–21, Cost Principles for Educational Institutions;

(2) OMB Circular No. A–87, Cost Principles for State and Local Governments; and

(3) OMB Circular No. A–122, Cost Principles for Nonprofit Organizations. This circular will also be used by for-profit organizations.

3–10 Administration

A. Cooperative agreements will be assigned to the cognizant postaward administration activity listed in DLA Handbook 4105.4, DoD Directory of Contract Administration Service Components.

B. The postaward administration activity will be responsible to ensure surveillance reviews are conducted: The reviews will include:

(1) Management control systems;

(2) Financial management control systems;

(3) Progress being made by the recipient in meeting its goals; and

(4) Compliance with certifications, representations and other performance factors.

C. For eligible entities covered by OMB Circular No. A–102, Grants and Cooperative Agreements with State and Local Governments, or OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

D. The cognizant Deputy for Small Business will be the focal point for the AGO for small business issues and for all recipient publication and training requests.

Sim C. Mitchell,

Program Manager, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 94–2180 Filed 1–31–94; 8:45 am]

BILLING CODE 3620–01–M

Office of the Secretary

Advisory Board on the Investigative Capabilities of the Department of Defense; Notice of Meeting

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to receive preliminary briefings by many of the agencies potentially affected by the work of this Advisory Board. This meeting is open to the public.

DATES: February 11 and 12, 1994.

ADDRESSES: 1700 N. Moore Street, suite 1420, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: January 26, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2103 Filed 1–31–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Supplemental Record of Decision (ROD) for the Disposal and Reuse of Norton Air Force Base (AFB), CA

On January 14, 1994, the Air Force signed the supplemental Record of Decision (ROD) for the Disposal and Reuse of Norton Air Force Base (AFB). The supplemental ROD was developed based upon review and consideration of the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Norton AFB, filed with the Environmental Protection Agency on June 4, 1993, the Partial ROD executed on December 15, 1993, and the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) dated January 14, 1994.

This supplemental ROD modifies the previous decision by withdrawing approximately thirty-three (33) acres from property which will be conveyed as a public airport. The withdrawn property is adjacent to the approach end of Runway 6 and includes a section of Perimeter Road, a portion of the Norton AFB Gold Course, and navigational aids. The withdrawn property excluding navigational aids, will be joined with the remaining gold course property in Parcel C. Title to the navigational aids, easements for such navigational aids, and an navigation easement over this property will be made available for disposal with the remainder of the airport property.

The implementation of this decision and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Mr. John E.B. Smith or Ms De Carlo Ciccel at (703) 696–5534. Correspondence should be sent to: AFBCA/SP, 1700 North Street, Suite 2300, Arlington, VA 22209–2809.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–2249 Filed 1–31–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The Training Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 23–25 February 1994 at Brooks AFB, San Antonio, Texas from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–2250 Filed 1–31–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Realignment of Marine Corps Air Station, Camp Pendleton, CA

Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Marine Corps intends to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Marine Corps Air Station (MCAS) Camp Pendleton. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990, and the specific 1993 base closure and realignment decisions approved by the Congress in September 1993. The U.S. Fish and Wildlife Service, Federal Aviation Administration, and U.S. Army Corps of Engineers have been requested to be cooperating agencies in the preparation of this EIS.

The proposed action involves the relocation of about 48 aircraft, 700 personnel, and associated functions from MCAS El Toro and MCAS Tustin, both of which are to be closed by July 10, 1999. Several military construction projects are required to upgrade existing facilities and construct new facilities to support the change of mission at MCAS Camp Pendleton, including aircraft maintenance facilities, bachelor quarters, a gymnasium, a warehouse, and special storage, training, and administration facilities.

Alternatives to be addressed in the EIS will focus on means of meeting MCAS Camp Pendleton realignment requirements, including alternative construction site locations and alternative training scenarios.

Major environmental issues that will be addressed in the EIS include air quality, air space useage, noise, traffic, utilities, endangered species, cultural resources, and community services and utilities.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps will hold a public scoping meeting on February 17, 1994, beginning at 7 p.m., at the Oceanside Senior Center, 455 Country Club Lane, Oceanside, California. This meeting will be advertised in area newspapers.

A brief presentation will precede request for public comment. Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Coast Highway, San Diego, CA 92132–5187, (Attn: Ms. Timarie Seneca, Code 09A2), phone number (619) 532–3780. All comments must be received no later than March 2, 1994.

By direction of the Commandant of the Marine Corps.

Dated: January 27, 1994.

R.W. Watkins,

Colonel, USMC, Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department.

Dated: January 27, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–2219 Filed 1–31–94; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare an Environmental Impact Statement for Realignment of Naval Air Station, Miramar, CA

Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Marine Corps intends to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Naval Air Station (NAS) Miramar. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990, and the specific 1993 base closure and realignment decisions approved by the Congress in September 1993. The U.S. Fish and Wildlife Service, the Federal Aviation Administration, and the U.S. Army Corps of Engineers have been requested to be cooperating agencies in the preparation of this EIS.

The proposed action involves the relocation of about 270 aircraft, 12,000 personnel, and associated functions from Marine Corps Air Station (MCAS) Tustin and MCAS El Toro, both of which are to be closed by 10 July 1999. Several military construction projects are required to upgrade existing facilities and construct new facilities to support the change of mission at NAS Miramar, including hangars, aprons, bachelor quarters, and training, maintenance, storage, dining, community support, and administrative functions.

Alternatives to be addressed in the EIS will focus on means of meeting NAS Miramar realignment requirements, including alternative construction site locations and alternative training scenarios.

Major environmental issues that will be addressed in the EIS include air quality, air space usage, noise, traffic, utilities, endangered species , cultural resources, and community services and utilities.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps will hold public scoping meetings on February 15, 1994, beginning at 7 p.m., at the Mira Mesa Recreation Center, 8575 New Salem Street, San Diego, California; and on February 24, 1994, beginning at 7 p.m., at the Tierrasanta Recreation Center, 11220 Clairmont Blvd., San Diego, California. These meetings will be advertised in area newspapers.

A brief presentation will precede request for public comment. Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Coast Highway, San Diego, CA 92132–5187, (Attn: Ms. Timarie Seneca, Code 09A2), phone number (619) 532–3780. All comments must be received no later than March 2, 1994.

By direction of the Commandant of the Marine Corps.

Dated: January 27, 1994.

R.W. Watkins,

Colonel, USMC, Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department.

Dated: January 27, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–2220 Filed 1–31–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact: Construction and Operation of the Knolls Site Low Level Radioactive Material Processing Facility, Schenectady County, NY

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors has prepared an Environmental Assessment for the proposed action to construct and operate the Knolls Site Low Level Radioactive Material Processing Facility. This facility will include equipment for the treatment, reclamation, and packaging for off-site disposal of radiologically controlled liquid and solid waste. The operations to be conducted are the same as those currently conducted in a portion of Building H2 at the Knolls Site. Building H2 is part of the former Separations Process Research Unit complex. This complex was built over forty years ago and was used in the early 1950's as a pilot-scale facility for investigating processes for separating fissionable isotopes from irradiated uranium. Moving current radioactive waste processing operations to a different location is necessary to make Building H2 available for decommissioning and removal.

The Environmental Assessment discusses alternatives to the proposed action and concludes that there are no alternatives to the proposed action that would accomplish the desired goal of continuing current waste processing operations at a location other than Building H2 but close to the locations where the waste is generated. The Environmental Assessment summarizes and references the extensive body of existing published reports which discuss the environmental performance of the Knolls Site, including the releases of radioactivity from the Site and the absence of environmental impact from Site operations. The Environmental Assessment discusses the fact that the operations and amounts of radioactivity processed will remain unchanged.

Naval Reactors provided this Environmental Assessment in draft form to New York State for review and comment. New York State did not have any comments.

Based on the analysis in the Environmental Assessment, Naval Reactors issued a proposed Finding of No Significant Impact on November 4, 1993. The proposed Finding was published in the **Federal Register** on

November 18, 1993, beginning a 30-day public review period (Vol. 58, No. 221, pp. 60852–60853). The fact that the proposed Finding appeared in the **Federal Register** and was available for review along with the Environmental Assessment at the Schenectady Public Library was advertised in several local newspapers in the Schenectady area through public notices placed by Naval Reactors. Copies of the Environmental Assessment and proposed Finding also were distributed to interested parties upon request.

One comment letter was received. The comments contained in this letter and the Naval Reactors responses are presented in a new Appendix to the Environmental Assessment. The Appendix has been sent to the commenter, and has been placed with the Environmental Assessment in the Schenectady Public Library. A summary of the comments and the Naval Reactors responses have been included at the end of this notice.

After considering the comments received in this letter, Naval Reactors has concluded that no new information has been made available that would change the determination that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321 et seq.). Therefore, Naval Reactors is issuing this final Finding of No Significant Impact.

ADDRESSES AND FURTHER INFORMATION: Persons requesting additional information on the Finding of No Significant Impact for construction and operation of the Knolls Site Low Level Radioactive Material Processing Facility, the National Environmental Policy Act process associated with this proposed action, or wishing a copy of the Environmental Assessment should contact Ms. Lisa Megargle, U.S. Department of Energy, Office of Naval Reactors (NE–60), Washington, DC, 20585, (703)–603–6126.

SUPPLEMENTARY INFORMATION:

Background

The Naval Nuclear Propulsion Program is a joint Navy/DOE program established in Presidential Executive Order 12344 (permanently enacted by Public Law 98–525, 42 U.S. Code 7158). The Office of Naval Reactors is the Naval Nuclear Propulsion Program organization within the DOE. Under the law, Naval Reactors is responsible for all matters pertaining to Naval nuclear propulsion including "* * * research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition of naval nuclear propulsion plants * * *" and "* * * the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities * * *." Naval Reactors is responsible for the Knolls Atomic Power Laboratory, which conducts research and development work on improved nuclear propulsion plants for U.S. Navy warships.

Proposed Action

The proposed action is to construct and operate the Knolls Site Low Level Radioactive Material Processing Facility. This facility will include equipment for the treatment, reclamation, and packaging for off-site disposal of radiologically controlled liquid and solid waste. The operations to be conducted are the same as those currently conducted in a portion of Building H2 at the Knolls Site. Building H2 is part of the former Separations Process Research Unit complex. This complex was built over forty years ago and was used in the early 1950's as a pilot-scale facility for investigating processes for separating fissionable isotopes from irradiated uranium. That work was unrelated to nuclear propulsion, but since it had been done at a site now dedicated to nuclear propulsion work, Naval Reactors is responsible for managing this complex until its decommissioning and removal can be arranged. Moving current radioactive waste processing operations to a different location is necessary to make Building H2 available for decommissioning and removal.

Alternatives Considered

There are no alternatives to the proposed action that would accomplish the desired goal of continuing current waste processing operations at a location other than Building H2 but close to the locations where the waste is generated.

Environmental Considerations

An extensive body of existing environmental reports document the environmental performance of the Knolls Site, including current waste processing operations at the Site. Radiation exposure to any member of the public due to the Knolls Site is too small to be measurable. The total annual radiation exposure to the Site workforce is less than the amount allowed by Federal regulations for a single worker. Releases of airborne radionuclides result in off-site doses that are less than one percent of the U.S. Environmental Protection Agency standard set forth in 40 CFR part 61, subpart H. The General Accounting Office completed in 1991 a thorough fourteen month review of environment, health, and safety matters (including reactor safety) at DOE sites under the cognizance of Naval Reactors, including the Knolls Site. The General Accounting Office reported to Congress that they found no significant deficiencies. Since operations to be conducted in the proposed facility are the same as those currently conducted in Building H2, the proposed action would result in no change from the current insignificant environmental impacts from the Knolls Site.

Determination

Based on the information and analysis in the Environmental Assessment, Naval Reactors considers the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act. Therefore, Naval Reactors has determined that preparation of an Environmental Impact Statement is not required.

Issued at Arlington, VA this 28th day of December 1993.

B. DeMars,

Deputy Assistant Secretary for Naval Reactors.

Summary of Public Comment on the Environmental Assessment and Proposed Finding of No Significant Impact and Naval Reactors Responses

One letter was received from the Knolls Action Project, which describes itself as a "grassroots citizen group with an extensive record of public concern for operations at the Knolls Sites." A summary of each substantive comment and the Naval Reactors response is provided below:

Comment: The Knolls Action Project does not condone the type of work that is conducted at the low level waste treatment facility since it is in support of military nuclear operations.

Response: The mission of the Knolls Site is to develop and support nuclear propulsion technology used by the U.S. Navy. This mission is an integral part of the national defense and is prescribed by Congress. Its conduct is beyond the scope of the subject Environmental Assessment.

Comment: The referenced General Accounting Office report is grossly inadequate since it was inconsistent with the charges of dangerous and

irresponsible practices brought by current and former Knolls Site workers.

Response: The 14 month review by the General Accounting Office was initiated by Congress in response to allegations from current and past employees, was conducted by an agency accountable to the Congress and not the Executive Branch, and provided a full opportunity for persons making allegations of safety and environmental problems to provide evidence to the investigators. At the time the review was announced in early 1990, the Knolls Action Project and other critics were widely reported in the news media as welcoming its performance since the General Accounting Office is an independent agency. The General Accounting Office investigators held security clearances and were given unfettered access to Naval Reactors classified material. Since the General Accounting Office has issued reports harshly critical of other nuclear activities, the positive report of this independent review is particularly noteworthy. The General Accounting Office concluded that "GAO's review of specific environmental and safety programs at Naval Reactors facilities shows no basis for allegations that unsafe conditions exist there or that the environment is being adversely affected by activities conducted there."

Comment: Quotations from a 1989 newspaper article of a November 1987 audit by Naval Reactors which observed radiological control problems at the Knolls Site indicate that statements in the Environmental Assessment about stringent radiological control practices cannot be believed. In particular, the unexplained loss of 7000 gallons of water from the Knolls Site water reuse system casts doubt about the radioactive material accountability system.

Response: The performance of rigorous, well-documented audits is an integral part of the Naval Reactors radiological control program. During its review, the General Accounting Office had access to all audit reports. All formal audit reports relating to safety, environment, health, and asbestos for a 30 month period were reviewed. The General Accounting Office stated "Deficiencies were noted in all of the reports, but virtually all of them were of a minor nature, and according to the documentation we reviewed, all were corrected soon after they were brought to the attention of the responsible management unit." The comment selectively quoted from the cited newspaper article and omits portions which note that the deficiencies were minor in nature. For example, the commenter omitted the portion of the article which stated that the 7000 gallons of water met U.S. Nuclear Regulatory Commission standards for radioactivity in drinking water which would allow its unrestricted release to the environment.

Comment: The Office of Naval Reactors, while conforming to the letter of the law, has been severely deficient in its responsibilities to provide for meaningful public involvement in this Environmental Assessment. In particular, the Environmental Assessment was not received by the Knolls Action Project until December 8, allowing only nine days for review and comment. Naval Reactors must take more active steps to inform the public and media of such studies.

Response: Naval Reactors provided opportunity for public comment beyond what is required by law and regulation. The draft Finding of No Significant Impact was published in the **Federal Register** on November 18, and a 30 day public comment period was provided, even though it is not required. Furthermore, Naval Reactors took out paid advertisements in the three principal newspapers of the local area with a combined circulation of over 240,000, the Albany Times Union (November 28), the Schenectady Gazette (November 29), and the Saratogian (November 28), to inform the public and ensure the media was aware of the Environmental Assessment and the opportunity to comment on the draft Finding of No Significant Impact. A copy of the Environmental Assessment was forwarded to the commenter by First Class mail within one work day of receipt of his request.

Comment: Statements in the Environmental Assessment about the thoroughness of outside regulatory review, though perhaps correct in some degree, create the false impression that the Knolls Site is under strict, thorough, and independent review by New York State offices and other Federal Government agencies.

Response: The Environmental Assessment stated that the Knolls Site had been inspected numerous times by the State of New York and the U.S. Environmental Protection Agency, and that over 80 inspections had been made since 1983. Only minor administrative items have been noted, and these items were quickly corrected. There have been no fines or penalties levied, no enforcement actions taken, and no other adverse regulatory actions. These inspections included access to classified information, where necessary. Naval Reactors obtained Department of Energy security clearances for the inspectors for this purpose.

Comment: The Environmental Assessment downplays the seriousness of the contamination problems associated with the SPRU complex. The proposed movement of low-level radioactive waste treatment facilities from the SPRU complex is essential to protect workers.

Response: The SPRU complex is not the subject of this Environmental Assessment. However, the Environmental Assessment notes that the total cumulative occupational radiation exposure of all 2300 Knolls Site workers is less than that permitted for a single worker. Thus, there is no radiation exposure problem for workers at the current radioactive waste handling site. With regard to the potential hazard of the SPRU buildings to workers and the environment, the General Accounting Office investigated the SPRU complex and concluded that it had been adequately characterized, periodically monitored, and controlled where necessary.

Comment: The reference to two classified documents in the sections dealing with safety and emergency preparedness make independent assessment of the Environmental Assessment impossible. Reliance on classified material is fundamentally in conflict with our democratic system and with the National Environmental Policy Act's requirements for public information and disclosure.

Response: The Environmental Assessment and its unclassified references provide a large body of unclassified information by which to judge the significance of the proposed action of relocating existing low level radioactive waste processing activities. With regard to classified references, the Council on Environmental Quality's regulations for implementation of the National Environmental Policy Act specifically provide for the control and protection of classified information and do not oblige its public release. Case law under the National Environmental Policy Act establishes that agencies may create classified portions of environmental documents which are not released to the public. The laws governing protection of information such as Naval nuclear propulsion technology were enacted by democratic institutions in the interests of the U.S. and its citizens and are consistent with Article 2 of the U.S. Constitution, and thus are not "fundamentally in conflict with democracy."

Comment: For all of the reasons listed above, the Environmental Assessment is inadequate. A more detailed and extensive Environmental Impact Statement should be prepared.

Response: The commenter has not identified any facts which would suggest that the environmental effects of relocating existing low level radioactive waste handling to a new building at the Knolls Site would be a major Federal action having a significant effect on the quality of the human environment. Thus, a Finding of No Significant Impact is justified for this project, and an Environmental Impact Statement is not needed.

[FR Doc. 94-2221 Filed 1-31-94; 8:45 am]
BILLING CODE 6450-01-P

Bonneville Power Administration

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings for the Proposed Columbia Wind Farm

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. *et seq.* and to conduct scoping meetings.

SUMMARY: BPA and Klickitat County (the County) intend to jointly prepare an EIS on the proposed Columbia Wind Farm in Klickitat County, Washington sufficient to satisfy NEPA and the Washington State Environmental Policy Act (SEPA). Conservation And Renewable Energy System (CARES), a joint operating agency composed of eight Washington Public Utility Districts, has proposed that BPA purchase the electrical output from the Columbia Wind Farm, a wind energy demonstration project (Project). CARES has submitted a Conditional Use Permit application to the County to construct and operate the Project. The EIS will consider all actions connected to the planning, development, and operation of the Project by CARES, to the issuance by the County of a Conditional Use Permit, and to the execution of a Power Purchase Agreement between BPA and CARES. The EIS will also consider potentially significant cumulative impacts that may result from this Project and from one or two other wind development projects proposed in the same area of the County.

DATES: BPA has established a 30-day scoping period (beginning with the publication of this notice in the **Federal Register**) during which affected landowners, concerned citizens, tribes, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the EIS. Scoping will help BPA and the County ensure that a full range of issues related to this proposal are addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed Project.

Scoping meetings will be held at the following locations and on the following dates:

- White Salmon, Washington, February 15, 7 p.m., Henkle Middle School Library, 480 NW Loop Rd., White Salmon, WA.
- Goldendale, Washington, February 16, 7 p.m., Public Utility District No. 1 of Klickitat County, 1313 S. Columbus, Goldendale, WA.

The scoping meetings will be conducted to include this Project and the other wind development projects proposed for development on lands near or adjacent to this Project. At the informal meetings, Project developers will make a presentation on their projects, written information will be available, and BPA and County staff will answer questions and accept oral and written comments. The meetings will be publicized by general announcement as well as by written invitation to known interested parties. Written comments are invited as well, and should be submitted by February 28, 1994 to the Public Involvement Manager or the Klickitat County Planning Director at the addresses below. Comments received after this date will be considered to the extent practicable.

The Draft EIS (DEIS) will be circulated for review and comment, and BPA and the County will hold a public comment meeting for the DEIS. BPA or the County will consider and respond to comments received on the DEIS in the final EIS.

ADDRESSES: BPA and the County invite comments and suggestions on the proposed scope of the DEIS. Send comment letters, requests to be placed on the project mailing list, and/or requests for more information to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212 or to the Klickitat County Planning Director, 228 West Main, Rm. 150, Goldendale, Washington 98620.

To have your name placed on the mailing list for this project, to submit comment letter, or to receive a copy of the DEIS when it becomes available, write to the Public Involvement Manager, Bonneville Power Administration—ALP, Post Office Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Fisher, EIS Manager, at (503) 230–4375 or, Francine Havercroft, Klickitat County Planning Director, at (509) 773–5703. You may also contact BPA's Public Involvement Office at (503) 230–3478, or toll-free 1–800–622–4519. Information may also be obtained from Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 1520 Kelley Place, Walla Walla, Washington 99362, (509) 527–6225.

FOR INFORMATION ON DOE NEPA PROCEDURES, OR THE STATUS OF A NEPA REVIEW CONTACT: Carol M. Borgstrom, Director of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In the 1991 Northwest Power Plan, the Northwest Power Planning Council set a goal of confirming additional conservation and renewable energy resources in the region. Responding to this goal, BPA made a commitment in the April 22, 1993, Record of Decision (ROD) for the Resource Programs Final Environmental Impact Statement to strive to expand the supply of renewable resources. The ROD identified the Resource Supply Expansion Program (RSEP) as the primary mechanism for confirming the supply, cost, and reliability of renewable energy supplies. Through the RSEP, the *Wind Energy Resource Development Strategy for the Pacific Northwest* was developed. A key component of the strategy was to promote the commercial viability of the wind resource in the Northwest through demonstration projects. In response to the strategy, BPA issued a 50 MW Request for Proposals (RFP) for a Wind Energy Demonstration Project(s) in September 1992. BPA received 10 proposals, selecting the Columbia Wind Farm proposal and one other, located in Carbon County, Wyoming for potential acquisition.

To assure consistency with the Resource Programs ROD, BPA must conduct project-specific NEPA review tiered to the Resource Programs EIS prior to acquiring the output of any generating resource. BPA will lead the NEPA analysis for the Columbia Wind Project. The Wyoming wind demonstration proposal will undergo NEPA analysis with the Bureau of Land Management as the lead agency and BPA as a cooperating agency.

A. Proposed Action

CARES, in conjunction with FloWind Corporation, proposes to develop, construct, and operate a wind energy electric generating facility in the Columbia Hills area southeast of

Goldendale, Washington and north of the Columbia River, outside of the Columbia River Gorge National Scenic Area. CARES would be the Project owner and the BPA required utility sponsor. As a contractor to CARES, FloWind would assist in Project development and initial Project operations. Upon completion, the Project would have an installed capacity of 25 MW of electricity which is expected to produce approximately 7 average megawatts of energy to be sold to BPA.

CARES has submitted a Conditional Use Permit (CUP) application to the County to develop the Project on approximately 395 hectares (975 acres) of private agricultural and scrub/shrub lands leased from Columbia Aluminum Corporation. As initially proposed, the Project development would involve the installation and operation of 91 wind turbines mounted on tubular towers approximately 51 meters (140 feet) in height. Each wind turbine would have a blade diameter of 26.2 meters (86.0 feet). Total machine height to the top of the turbine blade would be approximately 66 meters (183 feet).

Additional facilities in the Project would include a 3.7 meter (12 foot) wide main Project access road, engineered access roads to each turbine, associated meteorological towers, underground power collection and transmission lines, transformers, a wood pole line collecting power from the ends of each turbine row and carrying that power to a substation, and a transmission line from the Project substation to a transmission line owned by the Klickitat Public Utility District #1 of Klickitat County.

B. Process to Date

In order to reduce duplication between NEPA and comparable State and local requirements, BPA and the County have agreed to jointly prepare a single EIS for the Project sufficient to satisfy NEPA and the Washington State Environmental Policy Act (SEPA). The EIS will include a Cumulative Impact Study (CIS) to analyze any potentially significant cumulative impacts that may result from this Project and from one or two other wind development projects proposed in the same area of the County.

One other wind development project, known as the Washington Windplant, will also undergo a joint NEPA/SEPA review by BPA and the County. U.S. Windpower, Inc. (USW) plans to develop a 115 megawatt (MW) wind energy facility (Project) in the east Columbia Hills area near Goldendale, Washington. PacifiCorp, Puget Sound Power & Light Company (Puget), and Portland General Electric (PGE) together are purchasing 50 MW of the Project and have each requested BPA to integrate and transmit (wheel) their share of the electrical power generated from the proposed Project with the Federal transmission system. The Washington Windplant would involve the installation and operation of approximately 322 wind turbines on approximately 4856 hectares (12,000 acres) of private lands under easement to USW. Additional facilities would include meteorological towers, power collection and transmission lines, transformers, access roads, and a substation.

Another wind energy facility is proposed by Mariah Energy Group, Inc. (Mariah). Mariah has submitted an incomplete CUP application to the County to install 20 wind turbines on approximately 1.14 hectares (2¾ acres) of land owned by the developer. The site is located on land previously used by DOE to test the MOD–2 wind turbines. The MOD–2 wind turbines were dismantled and removed from the site when the testing was completed. The Mariah project will not undergo individual NEPA analysis because no Federal involvement has been requested. The County will conduct an appropriate level of SEPA review prior to approving the CUP if Mariah submits a completed CUP application.

The CIS used in the Columbia Wind Farm EIS will also be used in the Washington Windplant—EIS. This will ensure that the combined impacts from the two proposed wind development projects are analyzed and reasonable alternatives are considered in both EISs. Given the early stage of the Mariah project, it is not yet known whether the CIS will include that project as well. Although separate EISs will be prepared for the CARES and USW projects, the County and BPA have agreed to hold joint public scoping meetings to avoid duplication and confusion.

C. Alternatives Proposed for Consideration

Alternatives thus far identified for evaluation in the EIS are: (1) The proposed action, and (2) no action (the consequences of not developing the wind demonstration project). Other alternatives may be identified through the scoping process.

D. Identification of Environmental Issues

BPA and the County plan to jointly prepare an EIS addressing the proposed Columbia Wind Farm and the associated transmission facilities. BPA and the County intend to scope the EIS so that all potential impacts associated with the Columbia Wind Farm are addressed.

The principal potential issues identified thus far for consideration in the DEIS are as follows:

(1) Impacts to resident and migratory bird populations from operating wind turbines;

(2) Impacts to other wildlife and habitats;

(3) Impacts on cultural resources;

(4) Aesthetic and visual impacts;

(5) Sound impacts; and

(6) Land use impacts.

These, together with any additional issues identified through this scoping process, may be examined in the EIS.

Issued in Portland, Oregon, on January 26, 1994.

Paul O. Crabtree, Jr.,

Policy Advisor.

[FR Doc. 94–2222 Filed 1–31–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings for the Proposed Washington Windplant

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and to conduct scoping meetings.

SUMMARY: BPA and Klickitat County (the County) intend to jointly prepare an EIS on the proposed Washington Windplant in Klickitat County, Washington sufficient to satisfy NEPA and the Washington State Environmental Policy Act (SEPA). U.S. Windpower, Inc. (USW) plans to develop a 115 megawatt (MW) wind energy facility (Project) in the east Columbia Hills area near Goldendale, Washington. PacifiCorp, Puget Sound Power & Light Company (Puget), and Portland General Electric (PGE) together are purchasing 50 MW of the Project and have each requested BPA to integrate and transmit (wheel) their share of the electrical power generated from the proposed Project over the Federal transmission system. USW has submitted a Conditional Use Permit application to the County to construct and operate the Project. The EIS will consider all actions connected to the issuance of a Conditional Use Permit and the performance of the wheeling service. The EIS will also consider potentially significant cumulative impacts that may result from

this Project and from two other wind development projects proposed in the same area of the County.

DATES: BPA has established a 30-day scoping period (beginning with the publication of this notice in the Federal Register) during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the EIS. Scoping will help BPA and the County ensure that a full range of issues related to this proposal are addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Written comments should be sent to the address below.

Scoping meetings will be held at the following locations and on the following dates:

- White Salmon, Washington, February 15, 7 p.m., Henkle Middle School Library, 480 NW Loop Rd. White Salmon, WA.
- Goldendale, Washington, February 16, 7 p.m., Public Utility District No. 1 of Klickitat County, 1313 S. Columbus, Goldendale, WA.

The scoping meetings will be conducted to include this Project and the two other wind development projects proposed for development on lands near or adjacent to this Project. At the informal meetings, Project developers will make a presentation on their projects, written information will be available, and BPA and County staff will answer questions and accept oral and written comments. The meetings will be publicized by general announcement as well as by written invitation to known interested parties. Written comments are invited as well, and should be submitted by February 28, 1994 to the Public Involvement Manager or the Klickitat County Planning Director at the addresses below. Comments received after this date will be considered to the extent practicable.

The Draft EIS (DEIS) will be circulated for review and comment, and BPA and the County will hold a public comment meeting for the DEIS. BPA or the County will consider and respond to comments received on the DEIS in the final EIS.

ADDRESSES: BPA and the County invite comments and suggestions on the proposed scope of the DEIS. Send comment letters, requests to be placed on the project mailing list, and/or requests for more information to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212 or to the Klickitat County Planning Director, 228 West Main, Rm. 150, Goldendale, Washington 98620.

To have your name placed on the mailing list for this project, to submit comment letters, or to receive a copy of the DEIS when it becomes available, write to the Public Involvement Manager, Bonneville Power Administration—ALP, Post Office Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Fisher, EIS Manager, at (503) 230–4375 or, Francine Havercroft, Klickitat County Planning Director, at (509) 773–5703. You may also contact BPA's Public Involvement Office at (503) 230–3478, or toll-free 1–800–622–4519. Information may also be obtained from Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 1520 Kelley Place, Walla Walla, Washington 99362, (509) 527–6225.

FOR INFORMATION ON DOE NEPA PROCEDURES, OR THE STATUS OF A NEPA REVIEW CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System Act of 1974 (Pub. L. 93–454) requires the BPA Administrator to make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which is determined by the Administrator to be in excess of the capacity required to transmit electric power generated or acquired by the United States. Guided by this statutory responsibility, BPA must consider all requests from utilities to use the BPA transmission system to deliver power to specified locations.

A. Proposed Action

USW proposes to construct and operate a wind energy facility in the Columbia Hills area east of Goldendale, Washington and north of the Columbia River, outside of the Columbia River Gorge National Scenic Area. The proposal would include the phased development, construction, and operation of an electric generating facility on approximately 4856 hectares (12,000 acres) of private agricultural and scrub/shrub lands under easement to USW. The first phase of development would generate 50 MW of electricity; 115 MW of electricity would be generated upon completion of the final development phase.

USW would sell the first 50 MW of the Project to PacifiCorp, Puget, and PGE. Puget and PacifiCorp would each own an undivided interest of 37.5% in the first 50 MW. PGE would own the remaining 25% of the first 50 MW. USW would operate and maintain the Project for PacifiCorp, Puget, and PGE on a contractual basis.

USW has submitted a Conditional Use Permit (CUP) application to the County to develop the Project. Project development would involve the installation and operation of approximately 322 wind turbines (Model 33M-VS) mounted on lattice towers ranging from 29 to 43 meters (80 to 120 feet) in height, plus associated meteorological towers, power collection and transmission lines, transformers, access roads, and a control building and substation. Each wind turbine would have a blade diameter of 33 meters (108 feet) and each tower would be free standing, with no supporting guy wires. Total machine heights to the top of the turbine blade, depending on tower height, could range from 49 to 63 meters (135 to 175 feet).

Additional facilities in the Project could include a 3.7 meter (12 foot) wide access road to each turbine, underground power collection and communications lines connecting the turbines, a micro-wave communications tower, a wood pole line collecting power from the ends of each turbine row and carrying that power to a substation, and possibly a transmission line from the project substation to an off-site BPA substation.

B. Process to Date

In order to reduce duplication between NEPA and comparable State and local requirements, BPA and the County have agreed to jointly prepare a single EIS for the Project sufficient to satisfy NEPA and the Washington State Environmental Policy Act (SEPA). The EIS will include a Cumulative Impact Study (CIS) to analyze any potentially significant cumulative impacts that may result from this Project and from one or two other wind development projects proposed in the same area of the County.

One other wind development project, known as the Columbia Wind Farm, will also undergo a joint NEPA/SEPA review by BPA and the County. The Columbia Wind Farm is proposed for development by Conservation And Renewable Energy System (CARES), a joint operating agency composed of eight Washington Public Utility Districts. FloWind Corporation, as a contractor to CARES, would assist in Project development and initial operations. CARES has applied for a CUP from the County and has proposed that BPA purchase the electricity that

would be generated by the CARES project.

The CARES project would have an installed capacity of 25 MW and would be expected to produce approximately 7 average MW of energy. The CARES project would involve the installation and operation of 91 wind turbines on approximately 395 hectares (975 acres) of leased private land adjacent to the USW Project. Additional facilities would include meteorological towers, power collection and transmission lines, transformers, access roads, and a substation.

Another wind energy facility is proposed by Mariah Energy Group, Inc. (Mariah). Mariah has submitted an incomplete CUP application to the County to install 20 wind turbines on approximately 1.1 hectares (2–3/4 acres) of land owned by the developer. The site is located on land previously used by DOE to test the MOD–2 wind turbines. The MOD–2 wind turbines were dismantled and removed from the site when the testing was completed. The Mariah project will not undergo individual NEPA analysis because no Federal involvement has been requested. The County will conduct an appropriate level of SEPA review prior to approving the CUP if Mariah submits a completed CUP application.

The CIS used in the Washington Windplant— EIS will also be used for the Columbia Wind Farm EIS. This will ensure that the combined impacts from the two proposed wind development projects are analyzed and reasonable alternatives are considered in both EISs. Given the early stage of the Mariah project, it is not yet known whether the CIS will include that project as well. Although separate EISs will be prepared for the USW and CARES projects, the County and BPA have agreed to hold joint public scoping meetings to avoid duplication and confusion.

C. Alternatives Proposed for Consideration

Alternatives thus far identified for evaluation in the EIS are : (1) the proposed action, and (2) no action (the consequences of not providing transmission services to PacifiCorp, Puget, or PGE). Other alternatives may be identified through the scoping process.

D. Identification of Environmental Issues

BPA and the County plan to jointly prepare an EIS addressing the proposed Washington Wind Plant and the associated transmission facilities. BPA and the County intend to scope the EIS so that all potential impacts associated with the Washington Wind Plant are addressed.

The principal issues identified thus far for consideration in the DEIS are as follows:

(1) potential impacts to resident and migratory bird populations from operating wind turbines;

(2) impacts to other wildlife and habitats;

(3) impacts on cultural resources;

(4) aesthetic and visual impacts;

(5) sound impacts; and

(6) land use impacts.

These, together with any additional issues identified through the scoping process, may be examined in the EIS.

Issued in Portland, Oregon, on January 26, 1994.

Paul O. Crabtree, Jr.,

Policy Advisor.

[FR Doc. 94–2223 Filed 1–31–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. JD94–02387T Oklahoma–67]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

January 26, 1994.

Take notice that on January 24, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore and Woodford Formations, underlying a portion of Marshall County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the S/2 S/2 SE/4 of Section 9, S/2 NW/4 and SW/4 and SW/4 SE/4 and E/2 SE/4 of Section 15, N/2 N/2 NE/4 and SW/4 NE/4 NE/4 and S/2 NW/4 NE/4 and S/2 NE/4 and SE/4 of Section 16, NE/4 of Section 22 and N/2 of Section 23, Township 5 South, Range 5 East, all in Marshall County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2133 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–02388T Oklahoma–68]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 26, 1994.

Take notice that on January 24, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Chester Formation, underlying portions of Beaver County, Oklahoma, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The recommended area is described as all of the following sections:

Township 4 North, Range 21 East

Sections 2–6, 8–10, 17 and 20

Township 5 North, Range 21 East

Sections 6, 13, 23, 28, 33 and 34

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2134 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL94–23–000]

Inquiry Concerning Conditions in Portions of the Eastern Interconnection; Order Directing Filing of Information

Issued January 26, 1994.

During the week of January 16, 1994, vast portions of the Eastern

Interconnection [1] experienced record low temperatures. While voltage reductions were implemented in many areas within the Eastern Interconnection, rolling blackouts were required only in the Pennsylvania-New Jersey-Maryland Pool (PJM) and in Virginia Electric and Power Company's (VEPCO) service territory. During this period, sales of power, into PJM in particular, were at or near record levels. Both PJM and VEPCO set new peak demand records in this period. While the interconnected system in these areas did not fail, it appears that the system was stretched to its physical limits.

As part of its public interest responsibilities, including improving the ability of public utilities to avoid, if possible, similar situations in the future, the Commission is interested in learning about what took place during the week of January 16. Specifically, the Commission needs information concerning the sales, purchases, and transmission transactions that took place during this period in these areas that, in conjunction with unprecedented conservation efforts including a declared emergency in Washington, DC and the shutdown of Federal and state government offices in the Washington Metropolitan region, apparently prevented the physical collapse of the network in PJM and VEPCO. Accordingly, pursuant to sections 202(g), 301, 304, 307, 309 and 311 of the Federal Power Act,[2] the Commission is directing all public utilities [3] that are interconnected with PJM and/or VEPCO and that engaged in the sale of electric energy at wholesale in interstate commerce and/or the transmission of electric energy in interstate commerce with utilities located in PJM or with VEPCO [4] to provide the information specified on the Attachment to this order no later than February 4, 1994. The Commission also directs the public utility members of PJM [5] and VEPCO to provide information concerning any purchases during the period and any transactions among themselves, including any purchase, sale or transmission between PJM and VEPCO, or vice versa. The information is limited to jurisdictional service scheduled in whole or in part during the period beginning January 16, 1994, at 12:01 am. and ending January 22, 1994, at midnight.

Finally, the Commission is also interested in learning whether there was adequate transmission capacity available to wheel power to those utilities unable to meet their load during the critical time period and, if not, where transmission constraints were located. Accordingly, the public utility members of PJM and VEPCO should advise the Commission no later than February 4, 1994, of any instance during the week of January 16 in which they were able to arrange for a purchase of power but were unable to complete the transaction due to the inability to arrange transmission. They should identify the entity(ies) that failed to provide transmission and describe the reasons given. In addition, any entity, whether or not interconnected with PJM and/or VEPCO that had capacity available to sell power to PJM and VEPCO but was unable to obtain transmission should advise the Commission of such facts no later than February 4, 1994.

The Director, Office of Electric Power Regulation, or his designee, is hereby authorized to obtain any additional information which is necessary to accomplish the purposes of this inquiry.

Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements.[6] The Commission has obtained approval of the information collection requirements in this order pursuant to the expedited review provisions in § 1320.18 of OMB's regulations.[7]

By the Commission.

Lois D. Cashell,

Secretary.

Attachment

1. *Who must report:* Public utilities that are interconnected with PJM and/or VEPCO and that scheduled sales of electric energy at wholesale in interstate commerce and/or the transmission of electric energy in interstate commerce with utilities located in PJM and/or VEPCO in whole or in part, during the period beginning January 16, 1994, at 12:01 a.m. and ending January 22, 1994, at midnight and the public utility members of PJM and VEPCO must provide the information.

2. *Information to report for each hour during the covered period (individually for all transactions entered into by the public utility in that hour):*

A. Name, address and contact person for the recipient or provider of the service under OTHER PARTY.

B. The name of the service as found in the FERC Rate Schedule and FERC Rate Schedule No.

C. The rates on file for the service provided (*i.e.*, an energy charge of 110% of seller's incremental cost and a demand charge of up to 7 mills/kWh) and the rates actually charged for the service (*i.g.*, an energy charge of 44 mills/kWh and a demand charge of 6 mills/kWh). If the rate on file is a split the savings rate, give the seller's incremental cost and the buyer's decremental cost in addition to the rate actually charged.

D. The MW of the transaction if billed in MW and the MWh sold in each hour for all transactions.

E. Your system load in each hour.

F. Any explanatory information including information regarding transactions which could not be scheduled.

G. The original and two copies of the information requested.

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[1] The Eastern Interconnection includes all of the continental United States except for those areas contained in the Western Systems Coordinating Council, in the Electric Reliability Council of Texas, and in Alaska.

[2] 16 U.S.C. 824a(g), 825, 825c, 824f, 825h, and 825j (1988).

[3] 16 U.S.C. 824(e) (1988).

[4] Public utilities interconnected with PJM and/or VEPCO include Cleveland Electric Illuminating Company, the public utility subsidiaries of the Allegheny Power System, the public utility subsidiaries of American Electric Power Company, the public utility members of the New York Power Pool and Carolina Power & Light Company.

[5] The public utility members of PJM include Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Philadelphia Electric Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.

[6] 18 CFR part 1320.

[7] *Id.* at 1320.18(a).

HOURLY TRANSACTION REPORT OF_____ (Utilities Name)

[Date_____]

Hour beginning	Other party provider—P recipient—R	Name of service as listed in rate schedule	FERC rate schedule No.	Rates for service on file			Actual rates charged			MW	MWH	Your system load in the hour
				Demand	Energy	Other	Demand	Energy	Other			

Notes: List all transactions occurring in each hour, if a transaction encompasses more than one hour report all data for each hour. If you sold power or provided transmission service to the OTHER PARTY place a (P) before the OTHER PARTY name, if you purchased power or received transmission service from the OTHER PARTY place an (R) before the OTHER PARTY name. With respect to the "OTHER" column under RATES FOR SERVICE ON FILE and ACTUAL RATES CHARGED, describe the charges, if any, in a footnote. RATES FOR SERVICE ON FILE are the rates or rate ceilings in the rate schedule on file, ACTUAL RATES CHARGED are the actual rates in $/kWh, $/kW/day, $/kW/week, $/kW/month as shown on the bills.

[FR Doc. 94–2186 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–898–000]

Central and South West Services, Inc.; Notice of Filing

January 13, 1994.

Take notice that on January 10, 1994, Central and South West Services, Inc. (CSW), as agent for the electric utility operating companies of the Central and South West Corporation (CSW) and El Paso Electric Company (El Paso), tendered for filing under section 205 of the Federal Power Act an agreement to amend the "Restated and Amended Operating Agreement," which forms the basis for the coordinated operations of the CSW electric utility operating companies. The applicants state that El Paso and CSW are also jointly filing an application under section 203 of the Federal Power Act of even date seeking approval of the jurisdictional aspects of a merger transaction in which El Paso will become a wholly owned subsidiary of CSW. The agreement to amend will make El Paso a party to the CSW Restated and Amended Operating Agreement when the merger becomes effective.

Copies of the filing were sent to the Arkansas Public Service Commission, the Louisiana Public Service Commission, the New Mexico Public Utility Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

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 February 8, 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. 94–2185 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–24–001]

Equitrans, Inc.; Proposed Compliance Filing

January 26, 1994.

Take notice that on January 14, 1994, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following primary and alternate tariffs sheets:

Primary Sheets:
- Sub 2nd, Sub 1st Revised Sheet No. 5
- Sub 2nd, Sub 1st Revised Sheet No. 6
- Sub 2nd, Sub 1st Revised Sheet No. 8
- Substitute First Revised Sheet No. 260

Alternate Sheets:
- Alt Sub 2nd, Sub 1st Revised Sheet No. 5
- Alt Sub 2nd, Sub 1st Revised Sheet No. 6
- Alt Sub 2nd, Sub 1st Revised Sheet No. 8

These sheets contain a proposed effective date of January 1, 1994.

On December 1, 1994, Equitrans filed revised rate sheets to implement the 1994 GRI funding mechanism. By Order issued on December 30, 1993 the Commission approved Equitrans' tariff sheets subject to certain conditions. The Commission's Order required Equitrans to reflect on its rate sheets the fact that the GRI demand and commodity surcharges may be discounted to a minimum surcharge of zero. In addition, the Commission required the inclusion of tariff language explaining the determination of proper load factors for new customers. Equitrans states that it is making the instant filing to comply with the Commission's Order.

Equitrans states that it is filing its rate sheets in primary and alternate forms. On November 10, 1993, Equitrans made a filing in Docket No. RS92–15 and RP93–62 to reduce its approved transportation rates due to a miscalculation related to billing determinants. In its initial filing in this docket, Equitrans included rate sheets which showed the reduced base transportation rates based on the November 10 filing. To date, however, the Commission has not acted on the November 10 filing. Therefore, Equitrans states that the primary sheets reflect the lower base rates included in the November 10 filing, while the alternate rate sheets include Equitrans' currently approved base transportation rates. The rate and tariff provisions concerning the GRI funding requirement are the same for both the primary and alternate sheets.

Any person desiring to protest this application should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2131 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–69–006, RS92–69–007, RS92–69–011, and RP93–5–000]

Northwest Pipeline Corp.; Technical Conference

January 26, 1994.

In the Commission's December 16, 1993, order on Northwest Pipeline Corporation's Order No. 636 compliance filing,[1] the Commission determined that certain issues needed to be discussed at a technical conference. The conference to address these issues will be held on Wednesday, February 9, 1994, beginning at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2130 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–55–001]

Questar Pipeline Co.; Tariff Filing

January 26, 1994.

Take notice that on January 19, 1994, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Revised Sheet Nos. 5 and 5A to become effective January 1, 1994.

Questar states that these tariff sheets revise the (1) statement of rates to reflect minimum GRI surcharges of zero and (2) footnotes to the statement of rates to establish how Questar will determine the proper load factor to be used in applying GRI reservation surcharges to existing, replacement and new shippers receiving service on its transmission system.

Questar states further that this filing is tendered pursuant to 18 CFR 154.63(a)(1) and in compliance with the Commission's December 30, 1993, order in the instant docket.

Questar states that copies of this filing were served upon Questar's jurisdictional customers and the public service commissions of Utah and Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2132 Filed 1–31–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] 65 FERC ¶ 61,337 (1993).

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Statement of Policy on Mutual to Stock Conversions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Proposed Policy Statement.

SUMMARY: The FDIC solicits comments on a proposed policy statement setting forth guidance with respect to the conversion from mutual to stock ownership of State chartered savings banks and the FDIC's supervisory concerns on the matter.

DATES: Comments must be received by March 18, 1994.

ADDRESSES: Send comments to the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–400, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. [Fax number (202) 898–3838]. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director (202–898–6918), Garfield Gimber III, Examination Specialist (202–898–6913), Division of Supervision, or Walter P. Doyle, Counsel (202–898–3682), Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Request for Public Comment

The FDIC is considering adoption of a policy statement on conversion from mutual to stock form of ownership. Comment is requested on all aspects of the subject and, in particular, the proposed policy statement.

All state authorities provide some degree of oversight over mutual to stock conversion transactions involving institutions under their jurisdiction, and a number of statutes exist that deal with securities disclosure and changes of management and/or control and acquisitions. With respect to state oversight, comment is requested on whether or not such oversight is sufficiently uniform and adequate across states to protect the interests of the public, or whether federal oversight is necessary.

In light of existing federal and state securities laws and state conversion laws, comment is requested on what abusive practices are prevalent or likely and whether and why the FDIC should take action. If so, should the focus of FDIC attention be on the long-standing accountholders/members or are other interests, such as those of borrowers, trustees, management and employees, also important?

Comment is requested on whether the following proposed policy statement contains enough specificity to be effective in providing worthwhile guidance and preventing potentially objectionable practices. If the proposed or even a strengthened policy statement providing guidance to the industry is not considered adequate, should mutual to stock conversions be governed by an enforceable regulation? If so, should such a regulation closely follow the existing regulation of the Office of Thrift Supervision on this subject, with specific percentage limitations, such as on insider investments, or should a regulation more closely resemble a guidance format as embodied in the proposed policy statement? Should the FDIC seek or support congressional action in this matter?

II. Background

In recent years a number of state chartered mutual savings banks have converted to stockholder owned state savings banks. Many of these institutions first converted from federally chartered mutual savings associations to state chartered savings banks. In some cases, the conversion results in an acquisition by or merger into another institution, with accountholders/members obtaining

stock in the acquiring institution and not the converting savings bank.

One consequence of these conversions to state charter is that the FDIC may replace the Office of Thrift Supervision as the primary federal regulator. The mutual to stock conversion process is then subject to the rules and protections of state law. The Office of Thrift Supervision regulations governing conversions from mutual to stock form were enacted in 1974 in reaction to instances of abusive conversion transactions wherein insiders and their interests captured a large share of the converting institution's capital stock for considerably less than fair market value. The Office of Thrift Supervision regulation was structured to protect the interest of the converting mutual's accountholders/members in the current equity and perceived future value of the institution against abusive insiders and opportunistic depositors.

III. Reasons for FDIC Policy

Conversion rules under state law are not identical to and may be less stringent than Office of Thrift Supervision regulations. Absent effective state laws or some federal oversight over state mutual savings banks converting to capital stock form, the opportunity for inconsistency and abuse is ever present.

The areas of particular concern for potential abuse in conversion include: (1) Pricing the shares, (2) Apportioning the stock subscription rights, and (3) Disclosure of information needed to make an informed investment decision.

Offering the shares at too low of a price may unjustly enrich the recipients, increase the temptation by insiders to acquire more shares than they are fairly entitled to, and deny the institution all of the additional capital it should receive to protect depositors and the insurance fund. Setting the share price too high may result in poor investment decisions by accountholders/ members that may lack investment expertise.

In some conversion transactions insiders may appear to have received preferential treatment over the interests of accountholders/members who have supported the mutual savings bank. Management and directors, it can be argued, should not be preempted from receiving a fair portion of the stock rights since they have contributed to the value of the institution and should properly be induced to remain with the institution. However, management and directors also will continue to receive salaries and fees for their services to the institution.

In addition, mutual savings banks that convert to stock form undertake a major restructuring that possibly can lead to significant changes in the nature or volume of business conducted. In the past, some institutions, in leveraging capital raised through a conversion and reaching for a return on equity, have vigorously competed for loans and liberalized underwriting standards which led to loan losses that in many instances depleted more capital than was raised through conversion. Because of this potential, the FDIC feels the need to know at an early date the institution's business plan for post-conversion operation, growth and investment of any newly injected capital.

IV. Statement of Policy

Proposed Statement of Policy on Mutual To Stock Conversions By State Chartered Banks

State chartered mutual savings banks converting to capital stock ownership should afford adequate protection to the interests of long-standing accountholders/members in the current equity and perceived future value of the institution against insiders and opportunistic depositors. Such protection should include: (1) Correctly pricing the shares, (2) Equitably apportioning the stock subscription rights, and (3) Adequately and timely disclosing all relevant and pertinent information needed to make an informed investment decision.

A thorough independent appraisal by a qualified appraiser is appropriate in order to establish and justify a fair offering price for the shares of stock in the converted institution. The appraisal should include consideration of earnings projections, future prospects for a rate of return including any new capital, other recent stock offerings and conversion transactions, and the historic and current relationship of market price to book value and price/earnings ratio for nearby and similar sized institutions.

Accountholders/members who have supported the mutual savings bank over some reasonable period should be given considerable deference in the apportionment of stock subscription rights. Management and directors who are accountholders/members are entitled to the same rights as non-insider accountholders/members. Any additional deference accorded to insiders, including employment contracts and other benefits in an acquisition or merger into another institution, should be only as part of an adequate compensation program and thus be limited, justified and documented. Apportioning that leads to individual windfall gains should be avoided. Directors are reminded of their duty of loyalty to the converting institution.

The holders of stock subscription rights should be adequately and timely notified of their rights to buy. Offering the shares through a firm that is independent of the converting institution's insiders and their interests is one way to help insure that this takes place. Full disclosure of all relevant information should be made. Accountholders/members should be able to easily use funds on deposit to fund their purchases. In addition, accountholders/members should be fully informed of the risk inherent in purchasing stock. If stock sales are conducted on the institution's premises, care should be exercised to make sure accountholders/members clearly understand that stock purchases are not deposits and are not insured by FDIC.

State chartered mutual savings banks that contemplate converting to stock form are requested to notify the FDIC region in which the head office is located at an early date and submit for comment all the relevant terms and conditions, financial information and documents inherent in the conversion, including a business plan for post-conversion operation, growth and investment of any newly injected capital. The FDIC will work closely with the state authority in preparing any comments.

The FDIC review of transactions on a case-by-case basis will include consideration of whether the directors and management of the institution have fairly and effectively discharged their fiduciary duties of due care and loyalty to the institution and its accountholders/members.

Should the FDIC determine that the proposed conversion may raise safety and soundness concerns, or otherwise subject the bank to substantial legal liability, it may request additional information from the bank and/or may seek appropriate modifications in the terms and conditions of the proposal to alleviate those concerns. In situations where abusive insider self-dealing, fraud or other violations are suspected, stronger enforcement measures may be considered.

Depending on the terms and outcome of the transaction, the conversion may require formal federal approval under the Bank Holding Company Act or the Bank Merger Act, or appropriate notice under the Change in Bank Control Act.

Conversions to stock form, involving undercapitalized institutions, at the direction or control of a regulatory authority are sometimes called "supervisory conversions". This FDIC

statement applies equally to such conversions.

By order of the Board of Directors. Dated at Washington, DC this day of January, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–2235 Filed 1–31–94; 8:45 am]

BILLING CODE 6714–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a regular meeting of the Federal Accounting Standards Advisory Board will be held on *Friday, February 11,* 1994 from 9:30 a.m. to 4 p.m. in room *7310* (the Campbell Room) of the General Accounting Office, 441 G St., NW., Washington, DC. (The meeting of February 24 will also be held; due notice will be published.)

The agenda for the meeting includes discussions on (1) an accounting liability concept, (2) accrual accounting and criteria for when current value accounting might be appropriate, (3) appropriate ways to address OPEB in the liabilities ED, and (4) entity and display issues.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT:

Ronald S. Young, Executive Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: January 27, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–2200 Filed 1–31–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice implements the requirement of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Public Law 99–252) that each person who manufactures, packages, or imports smokeless tobacco shall provide the Secretary of Health and Human Services (HHS) annually with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. (This statute also requires reporting to HHS the nicotine content of smokeless tobacco products. The nicotine reporting requirement will be implemented at a later date.)

DATES: The first ingredient list is due on April 4, 1994, and shall identify all ingredients added to tobacco in the manufacture of smokeless tobacco products marketed on December 31, 1993. Beginning in 1994 and each subsequent calendar year, the ingredient list will be due on December 31, and shall identify any changes in the ingredients added to tobacco in the manufacture of smokeless tobacco products at any time during the previous twelve months.

ADDRESSES: The list shall be submitted to: Michael P. Eriksen, Sc.D., Director,Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Atlanta, GA 30341–3724.

FOR FURTHER INFORMATION CONTACT: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, (404) 488–5701.

SUPPLEMENTARY INFORMATION: Section 4(a) of Public Law 99–252 (15 U.S.C. 4403(a)) requires manufacturers, packagers, and importers of smokeless tobacco products to provide the Secretary of HHS annually with a list of all ingredients added to tobacco in the manufacture of smokeless tobacco products. This statute also stipulates that the list need not identify the company which uses the ingredients or the brand of smokeless tobacco which contains the ingredients.

The implementation procedures HHS has established for submitting the ingredient information require respondents to report each ingredient by chemical name and Chemical Abstract Service (CAS) Registry Number. This format for reporting ingredients is consistent with accepted reporting practices for other companies currently required to report ingredients added to other consumer products, including cigarettes.

The statute permits a person or group of persons required to submit an ingredient list to HHS to designate an individual or entity to provide information on their behalf. In such case, HHS procedures require the designated individual or entity to identify for HHS the person or group of persons on whose behalf the ingredient list is being submitted.

HHS has established strict procedures for assuring the confidentiality of the information submitted in accordance with section 4(b)(2)(C) of Public Law 99–252 (15 U.S.C. 4403(b)(2)(c)). The information will be treated as trade secret or confidential information subject to 5 U.S.C. 552(b)(4). Access to the information will be limited to those authorized by the Secretary in carrying out their official duties and to duly-authorized committees or subcommittees of the Congress that submit a written request for the information.

Information Collection Provisions:

This Notice contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned the control number 0920–0338. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and record keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products.

Description: The Comprehensive Smokeless Tobacco Health Education Act of 1986 requires HHS to collect this information. HHS is authorized to conduct research on the potential health effects of the ingredients, and to report to the Congress as appropriate.

Description of Respondents: Businesses or Other For-Profit Organizations.

Estimated Annual Reporting and Recordkeeping Burden: The Office on Smoking and Health (OSH) contacted five smokeless tobacco manufacturers, through the law firm of Patton, Boggs and Blow, which will submit ingredient information in order to estimate the annualized cost for reporting ingredient information to the Department of Health and Human Services. The estimated average cost to industry for this three year period is $4,314. This is based on an annualized estimated cost of $1,438 per company with an annual estimated cost range of $250 to $3500 per company per year. The estimated cost to the government for this collection and storage over a three year period is $18,000.00. This cost is based on an annualized estimated cost of $6,000.00 for collection and storage.

There are 11 manufacturers, packagers, and importers of smokeless tobacco products in the U.S. In November 1992, OSH contacted five companies, through the law firm of Patton, Boggs and Blow, which will submit ingredient information to the Department of Health and Human Services, regarding the estimated response burden to the industry. Patton, Boggs and Blow reported that the annual response burden for each company it represents ranges from 4 to 30 manhours, with an average burden of 15 hours per company.

Dated: January 25, 1994.

Walter R. Dowdle,

Deputy Director, Centers for Disease Control and Prevention (CDC).

Guidelines for Maintaining and Releasing Privileged Information Obtained in Accordance With Sec. 4(b)(2)(a) of Public Law 99–252 (15 U.S.C. 4403)

1. Purpose

These Guidelines establish minimum requirements to maintain, protect and release documents that contain privileged information regarding ingredients in smokeless tobacco products. The Guidelines establish individual responsibility for the accountability and protection of privileged information on ingredients added to tobacco in the manufacture of smokeless tobacco products and the quantity of nicotine in each such product. The Comprehensive Smokeless Tobacco Education Act of 1986 (Pub. L. 99–252 (15 U.S.C. 4403)) requires manufacturers, packagers, and importers of smokeless tobacco products to submit such information annually to the Secretary of Health and Human Services.

2. Policy

Employees of the Department of Health and Human Services shall take such action as may be necessary to assure implementation of statutory requirements to safeguard privileged information. In accordance with Public Law 99–252 (15 U.S.C. 4403 (b)(2)), HHS shall treat the lists of ingredients added to tobacco in the manufacture of smokeless tobacco products as trade secret or confidential information. HHS shall not reveal the information except as authorized by the statute. Privileged information shall be released to Congress only as provided in section 4(b) of Public Law 99–252 (15 U.S.C. 4403 (b)) and to employees of the Department authorized to review the information in carrying out their official duties under Public Law 99–252 (15 U.S.C. 4403(b)(2)). All other requests for the privileged information shall be denied.

If HHS receives a request for the privileged information under the Freedom of Information Act, the Freedom of Information Officer shall deny the request in accordance with the provisions of 5 U.S.C. 552(b)(3) and 552(b)(4), section 4(b)(2)(A) of Public Law 99–252 (15 U.S.C. 4403(b)(2)), which require the protection of confidential or trade secret information.

3. Statutory Requirements

Statutory requirements for safeguarding the subject privileged information are as follows:

a. Sections 4(b)(2) of Public Law 99–252 (15 U.S.C. 4403(b)(2)) (Comprehensive Smokeless Tobacco Health Education Act of 1986) 5 U.S.C. 552(b)(4) (Freedom of Information Act).

4. Definitions

a. Document Control Officer. This Officer is the Departmental official designated in writing as having responsibility for the Department's control of privileged information pertaining to the smokeless tobacco product ingredients. The Document Control Officer shall be the Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

b. Privileged Information. As used in this Guideline, privileged information refers to (i) any information provided to HHS in accordance with section 4(a)(1) of Public Law 99–252 (15 U.S.C. 4403(a)(1)), and (ii) any other materials derived from the information provided.

c. Secure Files Area. A room or rooms that are locked during non-duty hours.

d. Secure Files Containers. Any equipment that is locked when unattended and that cannot be hand carried (e.g., Power Files and Lektrievers, filing cabinets and shelf units, credenzas, desk pedestals, etc.,).

5. Responsibilities

The Document Control Officer shall:

(1) Provide written guidance to HHS organizational components regarding the action necessary to assure compliance with the provisions of these Guidelines.

(2) Maintain and verify the operation of an effective document control system.

(3) Assure adherence to the requirements these Guidelines establish.

(4) Investigate reports of overdue documents.

6. Persons Authorized to Have Access to Privileged Information

The following may be granted access to privileged information under the conditions specified:

a. Department Employees. Upon written authorization from the Document Control Officer, regular or special employees of the Department are permitted access to privileged information needed to perform their official duties. Any employee permitted such access shall, prior to receiving privileged information, read and execute a Commitment to Protect Confidential Information form.

b. In accordance with section 4(b)(2)(B) of Public Law 99–252 (15 U.S.C. 4403(b)(2)(B)), the Department shall provide privileged information submitted under that Act to a duly-authorized committee or subcommittee of Congress upon its written request. When documents are so released, the Department, at the same time, shall provide written notice of the release to the person who provided the privileged information.

Users of files containing privileged information are responsible for complying with these HHS Guidelines and other accountability procedures that the Document Control Officer establishes to protect the files.

7. Document Accountability

The Document Control Officer shall authorize, in writing, the release of the privileged information. Persons accessing the privileged information shall execute a Commitment to Protect Confidential Information form and provide personal identification to verify their identity.

a. Charge-Outs. When privileged information documents are charged out, the recipient shall sign a Commitment to Protect Confidential Information form. This form, which includes identifying information and anticipated

date of return, also shall serve as a document receipt form. The person who certifies to accept and protect the privileged information is responsible for the file documents received. Receipts shall be kept current so that documents can be located readily.

b. Control, Follow-up, and Verification of Locations. The Document Control Officer shall require the return of each document by the return date stipulated on the receipt. If use of the document is necessary for an additional period, the Document Control Officer may authorize an extension and shall document the files accordingly. When the privileged information documents are returned, the actual date of return shall be recorded on the receipt form.

c. Report of Lost Documents. Individuals who have received privileged information documents shall notify the Document Control Officer in writing when privileged information files cannot be located. The notification shall include:

(1) The name and organizational location of the individual authorized to possess the documents at the time of loss;

(2) The identification and description of each missing file;

(3) A summary of the efforts made to locate the missing file.

8. Document Protection

Document protection shall include the following:

a. During Non-Working Hours. All privileged information must be locked in an approved secure files area or in an approved secure files container during non-working hours.

b. During Working Hours. When not in actual use by an authorized employee, privileged information shall be protected by using the protective measures required for non-working hours.

9. Transfer of Privileged Information

Method of Transmission. The preferred method is person-to-person transmission. When this is not practical, the privileged information is to be sent through the U.S. Registered Mail system, unless a written exception has been obtained on an individual basis from the Document Control Officer.

10. Document Reproduction

Privileged information documents will be reproduced only as required for the performance of official business, and only by those persons so authorized by the Document Control Officer.

11. Document Disposition

The documents provided to the Department in accordance with Section 4(a)(1) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403 (a)(1)) shall be maintained in accordance with the Records Control Schedule of the Centers for Disease Control and Prevention (CDC).

12. Violation

Misuse or loss of privileged information constitutes a violation of statutory provisions and HHS rules for controlling and protecting such information. Employees failing to comply with the provisions of these Guidelines or other established document control procedures are subject to action commensurate with the seriousness of the violation.

Attachment A—Commitment to Protect Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products

Whereas access to confidential information in the files of the Public Health Service is required in the performance of official duties, I _____ on this _____ day of _____ 19__, hereby agree that I shall not further release, publish, copy, or disclose such information, and that I shall protect such information in accordance with the provisions of 5 U.S.C. 552(b)(4), and the Public Health Service guide for the Control of Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products.

I understand the provision of 5 U.S.C. 552(b)(4), and the PHS guide, and that I am subject to penalties prescribed by law for any violations thereof.

Signed: _____
Date: _____
Witnessed by: _____
Date: _____

Attachment B—Receipt for Confidential Information in the Manufacture of Smokeless Tobacco Products

To: Director, Office on Smoking and Health, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30341–3724.
From: _____

Receipt of the following privileged information is hereby acknowledged: *File#—Description of Information—Anticipated Date of Return.*
Date: _____
Signature: _____

Attachment C—Authority to Remove Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products

_____ (name) of _____ (government agency or office) is hereby granted the authority to have the following privileged information in his/her personal possession from _____ (hours), _____ (date) to _____ (hours), _____ (date).

Describe Privileged Information:
Document Number:
Title:
This information will be used for:

Authorized by: _____
Director, Office on Smoking and Health
Date: _____

[FR Doc. 94–2184 Filed 1–31–94; 8:45 am]
BILLING CODE 4160–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. February 17, 1994, 9 a.m., Holiday Inn-Bethesda, Versailles I, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Joan C. Standaert (HFD–180), 419–259–6211, or Valerie Mealy (HFD–9), 301–443–4695, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

General functions of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal 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 10, 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 recent reports of intestinal stricture in patients with cystic fibrosis who were taking high lipase activity pancreatic enzymes. The purpose will be to obtain advice on these cases and the studies that should be done to elucidate the safety of pancreatic enzymes as they might relate to gastrointestinal toxicity.

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 26, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–2170 Filed 1–31–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–079–N]

RIN: 0938–AG61

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1994

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

ACTION: Notice.

SUMMARY: This notice announces the preliminary Federal fiscal year (FFY) 1994 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act (the Act) and implementing regulations at 42 CFR 447.297 through 447.299. The preliminary FFY 1994 State DSH allotments published in this notice will be superseded by final FFY 1994 DSH allotments to be published in the **Federal Register** by April 1, 1994.

EFFECTIVE DATE: The preliminary DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1994.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 966–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1923(f) of the Social Security Act and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the **Federal Register** the national target and each State's allotment for disproportionate hospital share (DSH) payments for each Federal fiscal year (FFY). (See 57 FR 55118, November 24, 1992 and 58 FR 43156, August 13, 1993.) DSH payments are payment adjustments made to Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs. Preliminary amounts must be published by October 1 of each FFY and final amounts by April 1 of each FFY.

The implementing regulations provide that the national aggregate DSH limit for a FFY specified in the Act is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY.

(**Note:** Whenever the phrases "total medical assistance expenditures" or "total administrative costs" are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the "State DSH allotment".

Each State's DSH allotment for FFY 1994 is calculated by first determining whether the State is a "high-DSH State," or a "low-DSH State." This is determined by using the State's "base allotment." A State's base allotment is the greater of: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable

to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1994 is referred to as a "high-DSH State." The FFY 1994 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1994 is referred to as a "low-DSH State." The FFY 1994 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1993 increased by growth amounts and supplemental amounts, if any. However, the FFY 1994 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1994 (excluding administrative costs).

The growth amount for FFY 1994 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1993 and FFY 1994 multiplied by the State's final DSH allotment for 1993. Because the national DSH limit is considered a target, low-DSH States whose programs grow from one year to the next can receive growth that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between fiscal years FFY 1993 and FFY 1994. Furthermore, because a low-DSH State's FFY 1994 DSH allotment cannot exceed 12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1994 DSH allotment to be lower than its FFY 1993 DSH allotment. This situation occurs when the State experiences a decrease in its program expenditures between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance, expenditures for the current FFY. This is the case for the State of Rhode Island.

There is no supplemental amount available for redistribution for FFY 1994. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12-percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1994 national 12 percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1994.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1 million.

We are publishing in this notice the preliminary FFY 1994 national DSH target and State DSH allotments based on the best available data we have at this time from the States as adjusted by HCFA. This data is taken from each State's August 1993 Form HCFA–37 and is adjusted as necessary. The final FFY 1994 DSH allotments will be published in the **Federal Register** by April 1, 1994.

II. Calculations of the Preliminary FFY 1994 DSH Limits

We have calculated the preliminary FFY 1994 State DSH allotments in this notice in accordance with section 1923(f) of the Act and the applicable regulations. The results of these calculations are presented in chart format in section III. of this notice.

The total of the preliminary State DSH allotments for FFY 1994 is equal to the sum of the base allotments for all high-DSH States, the FFY 1993 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1994, we classified that State as a "high-DSH" State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan under title XIX of the Act in FFY 1994, we classified that State as a "low-DSH" State. There were 35 low-DSH States and 15 high-DSH States for FFY 1994 as a result of this classification.

We estimated the preliminary FFY 1994 national total medical assistance expenditures for these States to be $145,839,070,000. The expenditures were estimated using the August 1993 State budget projections (Form HCFA–37) for FFY 1994. Thus, the overall preliminary national FFY 1994 DSH expenditure target is approximately $17.5 billion (12 percent of $145.8 billion).

The high-DSH States' base allotments and the final low-DSH States' DSH allotments for 1993 total approximately $18.0 billion. This amount, which does not include growth or any State supplemental amounts for FFY 1994, is approximately $0.5 billion over the FFY 1994 preliminary national DSH target amount.

In addition, we have provided a total of $623,650,000 ($357,351,000 Federal share) in growth amounts for the 35 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1993 and FFY 1994. To compute this percentage, we first ascertained each low-DSH State's estimate of total FFY 1993 medical assistance and administrative expenditures as reported on the State's Medicaid Budget Report (Form HCFA–37) submitted in August 1993. Next, we compared those estimates to each low-DSH State's total estimated unadjusted FFY 1994 medical assistance and administrative expenditures as reported to HCFA on the State's August 1993 Form HCFA–37 submission.

The growth factor percentage was multiplied by the low-DSH State's final FFY 1993 DSH allotment amount to establish the State's preliminary growth amount for FFY 1994.

Since the sum of the total of the base allotments for high-DSH States and the total of the State DSH allotments for the previous FFY for low-DSH States ($17,977,185,000) is greater than the preliminary FFY 1994 national target ($17,500,688,000), there is no preliminary FFY 1994 redistribution pool.

The low-DSH State's growth amount was then added to the low-DSH State's final FFY 1993 DSH allotment amount to establish the preliminary total low-DSH State DSH allotment for FFY 1994. As noted above, if a State's growth amount, when added to its final FFY 1993 DSH allotment amount, exceeded 12 percent of its FFY 1994 estimated medical assistance expenditures, the State received a partial growth amount which, when added to its final FFY 1993 allotment, made its total State DSH allotment for FFY 1994 equal to 12 percent of its estimated FFY 1994 medical assistance expenditures. For this reason, eight of the low-DSH States received partial growth amounts.

As explained above, Rhode Island's preliminary 1994 DSH allotment is lower than its FFY 1993 DSH allotment because the State experienced a decrease in its program between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current year.

In summary, the total of all preliminary State DSH allotments for FFY 1994 is $18,598,427,000 ($10,656,898,000 Federal share). This total is composed of $17,977,185,000 in base allotments plus $623,650,000 in growth amounts for all low-DSH States plus $0 in supplemental amounts for low-DSH States. The total of all preliminary FFY 1994 State DSH allotments is 12.81 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1994. The total of all preliminary DSH allotments for FFY 1994 is $1,097,739,000 over the FFY 1994 preliminary national target amount of $17,500,688,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1994 to ensure that its actual FFY 1994 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1994 which will be published by April 1, 1994. As the ongoing reconciliation between actual FFY 1994 DSH payment adjustment expenditures and the final FFY 1994 DSH allotments takes place, each State should amend its plans as may be necessary to make any adjustments to its FFY 1994 DSH payment adjustment expenditure patterns so that the State will not exceed its final FFY 1994 DSH allotment.

The FFY 1994 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1994. In addition, additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1994 will continue to be reconciled back to each State's final FFY 1994 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1994 DSH allotment is not exceeded. Any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed.

Any DSH expenditures that are disallowed will be subject to the normal Medicaid disallowance procedures.

III. Preliminary FFY 1994 DSH Allotments Under Public Law 102–234

KEY TO CHART

Column	Description
Column A=	Name of State.

KEY TO CHART—Continued

Column	Description
Column B=	Final FFY 1993 DSH Allotments For All States. For a high-DSH State, this is the State's base allotment which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1993 which was published in the **Federal Register** on August 13, 1993.
Column C=	Growth Amounts For Low-DSH States. This is an increase in a low-DSH State's final FFY 1993 DSH allotment to the extent that the State's Medicaid program grew between FFY 1993 and FFY 1994.
Column D=	Preliminary FFY 1994 State DSH Allotments. For high DSH States this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1993 from column B plus the growth amounts from column C and the supplemental amounts, if any, from column D.
Column E=	High or Low DSH State Designation. "High" indicates the State is a high-DSH State and a "Low" indicates the State is a low-DSH State.

PRELIMINARY FEDERAL FISCAL YEAR 1994 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234

[Amounts are State and Federal Shares Dollars are in Thousands (000)]

State	Final FFY 93 DSH allotments for all states	Growth amounts for low DSH states (1)	Preliminary FFY 94 state DSH allotments	High or low DSH state designation
(A)	(B)	(C)	(D)	(E)
AL	$417,458	Not Applicable	$417,458	High.
AK	17,830	$781	18,611	Low.
AR	2,806	210	3,016	Low.
CA	2,191,451	Not Applicable	2,191,451	High.
CO	302,014	Not Applicable	302,014	High.
CT	408,933	Not Applicable	408,933	High.
DE	5,194	372	5,565	Low.
DC	38,000	2,823	40,823	Low.
FL	239,693	61,520	301,213	Low.
GA	343,078	53,121	396,199	Low.
HI	45,844	5,411	51,256	Low.
ID	1,659	402	2,060	Low.
IL	381,534	20,290	401,824	Low.
IN	320,475	Not Applicable	320,475	Low.
IA	5,027	538	5,565	Low.
KS	188,935	Not Applicable	188,935	High.
KY	264,289	Not Applicable	264,289	High.
LA	1,217,636	Not Applicable	1,217,636	High.
ME	165,317	Not Applicable	165,317	High.
MD	119,381	12,659	132,040	Low.
MA	489,547	66,987	556,534	Low.

PRELIMINARY FEDERAL FISCAL YEAR 1994 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234—Continued

[Amounts are State and Federal Shares Dollars are in Thousands (000)]

State	Final FFY 93 DSH allotments for all states	Growth amounts for low DSH states (1)	Preliminary FFY 94 state DSH allotments	High or low DSH state designation
(A)	(B)	(C)	(D)	(E)
MI	559,732	62,577	622,309	Low.
MN	48,579	5,393	53,971	Low.
MS	152,342	6,122	158,464	Low.
MO	731,894	Not Applicable	731,894	High.
MT	1,154	153	1,307	Low.
NE	3,730	574	4,304	Low.
NV	73,560	Not Applicable	73,560	High.
NH	392,006	Not Applicable	392,006	High.
NJ	1,094,113	Not Applicable	1,094,113	High.
NM	13,512	2,063	15,575	Low.
NY	2,784,477	91,455	2,875,932	Low.
NC	345,545	67,705	413,251	Low.
ND	1,086	8	1,094	Low.
OH	509,924	74,440	584,364	Low.
OK	23,568	Not Applicable	23,568	Low.
OR	20,279	2,814	23,093	Low.
PA	967,407	Not Applicable	967,407	High.
RI (2)	97,160	Not Applicable	94,751	Low.
SC	439,759	Not Applicable	439,759	High.
SD	1,163	235	1,397	Low.
TN	430,611	18,562	449,173	Low.
TX	1,513,029	Not Applicable	1,513,029	High.
UT	5,003	701	5,704	Low.
VT	24,403	1,585	25,988	Low.
VA	174,251	21,287	195,537	Low.
WA	270,374	34,501	304,875	Low.
WV	121,883	7,097	128,980	Low.
WI	9,325	1,108	10,433	Low.
WY	1,216	158	1,374	Low.
Total	17,977,185	623,650	18,598,427	

Notes: (1) There were 3 low DSH states which had negative growth and 8 low DSH states which got partial growth up to 12% of FFY 94 map.
(2) Prior year's allotment exceeded 12 percent of FFY 94 map so allotment was reduced to 12 percent of FFY 94 map.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice does not contain rules; rather, it reflects the DSH allotments for each State as determined in accordance with §§ 447.297 through 447.299.

We have discussed the method of calculating the preliminary FFY 1994 national aggregate DSH target and the preliminary FFY 1994 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for high-DSH States since we are now interpreting the 12-percent limit as a target. Low-DSH States will get their base allotments plus their growth amounts.

In accordance with the provisions with Executive Order 12886, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 8, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 23, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–2278 Filed 1–31–94; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority; Correction

Part H, Public Health Service (PHS), Chapter HC (Centers for Disease Control and Prevention), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) published at 58 FR 59043, November 5, 1993, is being amended to make technical corrections

to Section HC–B, Functions, to reflect a change in the Standard Administrative Code for the National Immunization Program. The change is as follows:

Under Chapter HC, Section HC–B, Functions, following the titles *National Immunization Program (HCA8)* and *Office of the Director (HCA81)*, delete the codes *(HCA8)* and *(HCA81)* and substitute *(HCJ)* and *(HCJ1)*, respectively.

Dated: January 25, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–2104 Filed 1–31–94; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR–030–04–4333–02; G4–066]

Availability of the Final Management Plan and Corridor Boundaries for the Main, West Little and North Fork Owyhee Rivers

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of the Final Management Plan and Corridor Boundaries for the Main, West Little and North Fork Owyhee Rivers, components of the National Wild and Scenic Rivers System. The final corridor boundaries of the designated segments of the Main, West Little, and North Fork Owyhee Rivers lie entirely within Malheur County, Oregon.

ADDRESSES: The Final Management Plan and Corridor Boundaries for the Main, West Little and North Fork Owyhee Rivers, is available at the Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918; telephone (503) 473–3144.

FOR FURTHER INFORMATION CONTACT: Jerry Taylor, Jordan Resource Area Manger, Bureau of Land Management, Vale District, 100 Oregon street, Vale, OR 97918, (Telephone 503 473–3144).

Vicki E. Hamel,

Assistant District Manager, Administration.

[FR Doc. 94–2108 Filed 1–31–94; 8:45 am]

BILLING CODE 4310–33–M

[ID–050–4060–05]

Intent To Amend the Bennett Hills/ Timmerman Hills Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Bennett Hills/Timmerman Hills MFP Amendment.

SUMMARY: Pursuant to 43 CFR part 1600, the Shoshone District Bureau of Land Management proposes to amend the Bennett Hills/Timmerman Hills Management Framework Plan (MFP) to identify approximately 309 acres to be withdrawn from the operation of the mining laws.

DATES: Comments concerning this plan amendment must be received within 30 days of publication of this notice.

ADDRESSES: Written comments concerning this plan amendment should be sent to: Mary C. Gaylord, District Manager, Bureau of Land Management, Shoshone District Office, P.O. Box 2–B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Harold Brown, Realty Specialist, Shoshone District Office, 400 West F Street, P.O. Box 2–B, Shoshone, Idaho 83352, (208) 886–2206.

SUPPLEMENTARY INFORMATION: The amendment proposed includes the designation of approximately 309 acres to be withdrawn from the operation of the mining laws. The withdrawal of the public land is considered necessary to protect a unique geologic resource from destruction and removal under operation of the mining law of 1872. The plan amendment will consider appropriate alternatives to this proposal. The following resources will be considered in preparing the plan amendment: lands, minerals, wildlife, range, cultural, watershed/soils, threatened/endangered plant and animal species, and hazardous materials. The planning team will consist of staff members representing each resource. The proposal to designate the land for withdrawal from mineral entry represents no anticipated controversy and no public meetings are planned.

LOCATION AND AVAILABILITY OF DOCUMENTS RELEVANT TO THE PLANNING PROCESS: All documents are available at the Shoshone District BLM Office, 400 West F Street, Shoshone, Idaho. The hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: January 12, 1994.

Janis L. VanWyhe,

Associate District Manager.

[FR Doc. 94–2246 Filed 1–31–94; 8:45 am]

BILLING CODE 4310–GG–M

[WY–930–4210–06; WYW 130940]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau (BLM) proposes to withdraw approximately 7,202 acres of public land and Federal minerals and 320 acres of Federal minerals underlying private lands in Bighorn County, to protect important scenic, recreation, and cultural resource values in the Devil Canyon Area, containing sections of the Porcupine, Oasis Spring, Trout, and Deer Creek drainages near Lovell, Wyoming. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

EFFECTIVE DATES: February 1, 1994. Comments must be received by May 2, 1994.

ADDRESSES: Comments and requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Cody Resource Area Manager, P.O. Box 518, Cody, Wyoming 82414, (307) 587–2216.

SUPPLEMENTARY INFORMATION: On December 23, 1993, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and Federal minerals from settlement, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 57 N., R. 92 W.,
Sec. 7, lots 3,4, E½SW¼;
Sec. 18, lots 1–4, E½, E½SW¼
Sec. 19, N½NE¼.
T. 57 N., R. 93 W.,
Sec. 3, SW¼SW¼;
Sec. 4 W½NE¼, W½, SE¼
Sec. 5, NE¼, E½SE¼;
Sec. 9, NE¼, N½NW¼, NE¼SW¼, N½SE¼;
Sec. 10, SW¼NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 11, S½;
Sec. 12, S½S½;
Sec. 13, all;
Sec. 14, NE¼SE¼, N½NE¼, NW¼;

Sec. 15, N½, SE¼.
T. 58 N., R. 93 W.,
Sec. 19, lots 1–2, N½, E½SW¼, SE¼;
Sec. 20, lots 3–8, SW¼, S½SE¼;
Sec. 21, S½SW¼;
Sec. 28, N½NW¼, SW¼SW¼;
Sec. 29, all;
Sec. 30, lots 1–3, E½, E½NW¼, NE¼SW¼;
Sec. 32, E½, E½W½;
Sec. 33, W½W½, SE¼SW¼.
T. 58 N., R. 94 W.,
Sec. 24, lots 1,2,7,8, SE¼NE¼.

The area described contains approximately 7,202 acres of public surface and Federal minerals and 320 acres of Federal minerals underlying private lands in Bighorn County.

The purpose of the proposed withdrawal is to protect the important scenic, recreation, and cultural values pending further study and development of appropriate, and possibly longer-term, actions to protect and manage the resources.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of the area.

Dated: January 21, 1994.

Ray Brubaker,

State Director, Wyoming.

[FR Doc. 94–2247 Filed 1–31–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–930–4210–06; WYW 130395]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw approximately 4,800 acres of National Forest System land for 10 years to protect the values that make segments of Porcupine and Bucking Mule Creeks eligible for designation under the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906; 16 U.S.C. 1271–1287). This action will allow protection until a final determination of eligibility can be made. This notice closes the land to location and entry under the United States mining laws for up to 2 years. The land will remain open to mineral leasing until the land is designated as part of the Wild and Scenic River System.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, 307–775–6127.

SUPPLEMENTARY INFORMATION: On July 29, 1993, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land within one quarter mile of the banks of Porcupine and Bucking Mule Creeks from location and entry under the United States mining laws, subject to valid existing rights:

Sixth Principal Meridian

Bighorn National Forest

T. 56 N., R. 91 W.,
Sec. 7, lots 3, 4, E½SW¼;
Sec. 17, NW¼, S½;
Sec. 18, lots 1–4, NE¼, E½NW¼, E½SW¼;
Sec. 20, N½, SE¼;
Sec. 21, NW¼, SW¼.
T. 56 N., R. 92 W.,
Sec. 3, lots 3,4, S½;
Sec. 4, lots 1,2, SE¼;
Sec. 10, N½;
Sec. 11, all;
Sec. 12, lots 3,4 SW¼, W½SE¼;
Sec. 13, lots 1,2, W½NE¼, NW¼.
T. 57 N., R. 92 W.,
Sec. 17, SW¼;
Sec. 20, N½; SE¼;
Sec. 21, all;
Sec. 22, NW¼, S½;
Sec. 23, NE¼, S½;
Sec. 24, N½, SE¼;
Sec. 26, N½;
Sec. 27, N½, SW¼;
Sec. 28, all;
Sec. 29, NE¼;
Sec. 34, N½, SE¼;
Sec. 35, NW¼, SW¼.

The area described contains approximately 4,800 acres in Bighorn County.

The proposed Porcupine and Bucking Mule Creeks withdrawal area contains unique and important wild and scenic values. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above, unless the application is denied or cancelled, or the withdrawal is approved prior to that date. During this segregative period, the Forest Service will continue to allow those uses that are consistent with the Bighorn National Forest Land and Resource Plan.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the land and segregation shall not have the effect of authorizing any use of the land by the Department of Agriculture.

Dated: January 21, 1994.

Ray Brubaker,

State Director, Wyoming.

[FR Doc. 94–2248 Filed 1–31–94; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 22, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register

criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 15, 1994.

Carol D. Shull,

Chief of Registration, National Register.

South Dakota

Davison County

Kelly, J. Nelson, House, 521 S. 5th St., Grand Forks, 94000058.

Wisconsin

Rock County

Strong Partridge Mound Group, 1750 Arrowhead Dr., Beloit, 94000057.

[FR Doc. 94–2114 Filed 1–31–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32447]

Burlington Northern Railroad Co.—Trackage Rights Exemption—City of Dallas, City of Fort Worth, and D/FW Railtran

The Cities of Dallas and Fort Worth, TX and D/FW Railtran (RAILTRAN) have agreed to renew overhead trackage rights to Burlington Northern Railroad Company (BN). The trackage rights extend from milepost 611.4 at North Fort Worth to milepost 643.9 in Dallas. BN will continue to operate its own trains with its own crews over the RAILTRAN line under these renewed trackage rights.

These trackage rights represent a renewal of trackage rights originally granted to BN's predecessor in an agreement dated November 16, 1911, by RAILTRAN's predecessor. This exemption is filed pursuant to City of Dallas, City of Fort Worth and D/FW RAILTRAN—Petition for Declaratory Order, Finance Docket No. 32406 (ICC served December 30, 1993). This exemption was scheduled to become effective January 13, 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 automatically stay the transaction. Pleadings must be filed with the Commission and served on: Michael E. Roper, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main St., Fort Worth, TX 76102–5384.

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 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–2189 Filed 1–31–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Farmworker Housing Assistance Program: Availability of Funds for Technical Assistance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA); clarifications.

SUMMARY: On December 27, 1993, the Department of Labor, Employment and Training Administration, published a notice in the **Federal Register** (FR DOC. 930931510) announcing the availability of funds to provide technical assistance to private nonprofit and public organizations engaged in assisting farmworkers in seeking and securing temporary or permanent housing, Solicitation for Grant Application (SGA/DAA–94–002). This notice is to provide clarifications regarding the eligibility and the application process.

CLARIFICATIONS:

1. *Number of Grants.* The number of grants to be awarded will be up to six or more.

2. *Budget Information.* Budget information must be submitted separately in Part III. No information pertaining to the budget should be included in the Technical Proposal, Part II.

3. *Executive Order 12372.* "Intergovernmental Review of Federal Programs," and the implementing regulations to 29 CFR part 17, are applicable to this program. Pursuant to these requirements, in States which have established a consultation process expressly covering this program, applications shall be provided to the State for comment. Since States may also participate as competitors for the program, applications shall be submitted to the State upon the deadline for submission to DOL. 20 CFR 633.202(d).

4. *Standard Forms.* Attached are Forms SF09424, "Application for Federal Assistance," and SF09424a, "Budget."

FOR FURTHER INFORMATION CONTACT:

Irene Pindle or Shirley Horton, Telephone: (202) 219098702 (This is not a toll-free number).

Signed at Washington, DC, on January 27, 1994.

James C. DeLuca,

ETA Grant Officer.

BILLING CODE 4510–30–M

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV)
Prescribed by OMB Circular

BUDGET INFORMATION – Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1._____	$_____	$_____	$_____	$_____
2._____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT **						
(E) SUPPLIES						
(F) CONTRACTUAL (Consultants)						
(G) OTHER Staff/Product Devel. Eval/Dissemination						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

** SEE PART IV - SPECIAL CONDITION #9 AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 94-2230 Filed 1-31-94; 8:45 am]
BILLING CODE 4510-30-C

Mine Safety and Health Administration

Alternate Case Resolution Initiative; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public meeting to discuss its plans to assume responsibility for handling cases involving low dollar civil penalties under a program entitled "Alternate Case Resolution Initiative." MSHA personnel, with assistance and advice from attorneys of the Department of Labor's Office of the Solicitor, will be trained to resolve enforcement issues with mine operators prior to litigation. In those instances where resolution of these cases could not be reached, MSHA personnel would represent the Secretary in the litigation process before Administration Law Judges of the Federal Mine Safety and Health Review Commission.

MSHA officials along with representatives from the Office of the Solicitor will give a brief overview of the program, and afterwards, respond to questions from the public.

DATES: The public meeting will be held on Friday, February 4, 1994, from 10:30 a.m. to 12 noon.

ADDRESSES: Hearing Room A, 11th floor, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Deborah K. Green, Office of the Solicitor. (703) 235–1161.

Dated: January 27, 1994.

Edward C. Hugler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–2229 Filed 1–31–94; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–005]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Triton Systems, Inc., of Marlborough, Massachusetts, and exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,245,044, entitled "Di(hydroxyphenyl) Benzimidazole Monomers," which issued on September 14, 1993. NASA further intends to grant Triton Systems, Inc., exclusive options for the following related inventions: NASA Case No. LAR–14–643–1–CU, entitled "Polybenzimidazoles via Aromatic Nucleophilic Displacement"; NASA Case No. LAR–14–924–1–CU, entitled "Molecular-Weight-Controlled End-Capped Polybenzimidazoles"; and NASA Case No. LAR–14–965–1–CU, entitled "Acetylene and Phenylacetylene Terminated Poly (Arylene Ether Benzimidazoles)." The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by April 4, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: January 12, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–2166 Filed 1–31–94; 8:45 am]

BILLING CODE 7501–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application.

SUMMARY: The National Credit Union Administration ("NCUA") will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions (the "Program") through March 31, 1994. Application procedures are set forth in Part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions").

DATES: Applications must be received by March 31, 1994.

ADDRESSES: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Ron Lewandowski at the above address or telephone (703) 518–6490.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to make reduced rate loans to both federally and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

This Notice is published pursuant to 705.9 of NCUA's Regulations (12 CFR 705.9) which states that NCUA will provide notice in the Federal Register when funds in the program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Program will be accepted through March 31, 1994. Credit unions wishing to participate in the Program should refer to Part 705 of NCUA's Regulations for application procedures and Program requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration Board on December 14, 1993.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 94–2137 Filed 1–31–94; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR

50.61(b)(2)(i) to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (the licensee), for operation of the Zion Nuclear Power Station Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirement to determine the unirradiated reference temperature in accordance with the requirements of 10 CFR 50.61(b)(2)(i). The licensee's request is for an exemption that will allow it to determine the unirradiated reference temperature using a method that is an alternative to the one described in NB–2331 of Section III of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). Without the exemption, the licensee would need to commit a significant expenditure of resources to justify continued operation or prematurely retire the units.

The exemption is in response to the licensee's application for exemption dated December 3, 1993 as supplemented December 14, 1993. Prior correspondence commenced with a letter from the licensee dated December 13, 1991, that replied to the amendment to 10 CFR 50.61 which was published in the **Federal Register** on May 15, 1991 (56 FR 22300). In a letter dated March 13, 1992, the licensee provided its flux reduction program to ensure the intermediate-to-lower shell circumferential weld for Zion, Unit 1, would remain less than the screening criterion through 32 EFPY. In a letter dated May 22, 1992, the licensee used data provided by the Babcock and Wilcox Owner's Group (BAWOG) to address the initial RT_{NDT} and RT_{PTS} for the Zion, Units 1 and 2, reactor pressure vessels (RPVs). With this data, the licensee was able to show that the RPVs will satisfy the pressurized thermal shock (PTS) screening criteria through 32 EFPY. After reviewing the licensee's submittals, the staff requested additional information in a letter dated December 2, 1992. The licensee responded in a letter dated January 28, 1993. On June 9, 1993, the staff met with the licensee to discuss the performance of a modified analysis utilizing improved analytical techniques. In a letter dated September 1, 1993, the licensee provided a summary report demonstrating that the Zion RPVs will not exceed the end-of-life PTS screening criteria. In another letter dated October 5, 1993, the licensee detailed the development of the methodology utilized in performing the PTS evaluation for the Zion RPVs.

The Need for the Proposed Action

The proposed exemption is needed because 10 CFR 50.61(b)(2)(i) requires that the unirradiated reference temperature be determined from measurements as defined in the ASME Code, Section III, Paragraph 2331. The PTS rule was amended on May 15, 1991. The amended rule changed the method of calculating embrittlement to the method recommended in Regulatory Guide (RG) 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials," and required licensees to consider the effect of reactor vessel operating temperature and surveillance results on the calculated RT_{PTS} value. Test results produced a wide variability in unirradiated reference temperature, with a large standard deviation and a higher than expected mean value. This large uncertainty in unirradiated reference temperature may be due to the low upper shelf behavior of the material. Hence, the definition of unirradiated reference temperature in the ASME Code may not be applicable for material with low upper shelf behavior such as that found at Zion. The licensee has proposed to determine the unirradiated reference temperature from drop weight and fracture toughness tests instead of the method defined in Section III of the ASME Code. Since the licensee has not followed the method in Section III of the ASME Code, its method for determining the unirradiated reference temperature of the weld material does not meet the requirements of 10 CFR 50.61 and an exemption is required. If the proposed exemption were not granted, the RPVs of Zion, Units 1 and 2, would exceed the screening criteria for pressurized thermal shock prior to expiration of the operating licenses. This would result in a significant expenditure of resources to justify continued operation or the premature retirement of the units.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed exemption would not significantly increase the potential for failure of the reactor vessel. Although the licensee would not be determining the unirradiated reference temperature of the weld material in accordance with the requirements of 10 CFR 50.61, determining the unirradiated reference temperature from drop weight and fracture toughness tests instead of the method defined in Section III of the ASME Code would meet the intent of the Code to ensure that the RT_{PTS} values for all beltline materials are below the PTS screening criteria at expiration of the Zion, Units 1 and 2, licenses. Consequently, the probability of reactor vessel failure would not be increased, nor would the post-accident radiological releases be greater than previously determined. Nor would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission's staff conclude that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission's staff concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility and would not meet the intent of the rule to ensure that the beltline materials of the RPVs of Zion, Units 1 and 2, will be below the PTS screening criteria at the expiration of their licenses.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

The staff consulted with the State of Illinois regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 3, 1993, as supplemented December 14, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 24th day of January 1994.

For the Nuclear Regulatory Commission.

James E. Dyer,

Project Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–2172 Filed 1–31–94; 8:45 am]

BILLING CODE 7590–01–M

Joint Statement of Understanding Between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Joint Statement of Understanding Between the Nuclear Regulatory Commission and the Department of Energy.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) have entered into a Joint Statement of Understanding which describes the roles of the DOE and NRC in implementing the Energy Policy Act of 1992 provisions on the regulation of gaseous diffusion uranium enrichment plants. The text of the Joint Statement of Understanding is set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. S. R. Ruffin, Office of Nuclear Material Safety and Safeguards, MS 4–E–4, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–2696.

Dated at Rockville, Maryland, this 26th day of January, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Joint Statement of Understanding

By October 24, 1994, pursuant to Title XI of the Energy Policy Act of 1992 (the "Act"), the Nuclear Regulatory Commission (the "NRC") is directed to establish standards (the "standards") for regulation of the gaseous diffusion uranium enrichment facilities (the "facilities" or "GDPs") owned by the Department of Energy (the "DOE") in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Title XI of the Act also specifies that NRC establish a certification process to ensure that the U.S. Enrichment Corporation (the "Corporation"), which is to lease the facilities from DOE, complies with the NRC standards. After NRC establishes the standards, the Corporation is required to apply at least annually to NRC for a certificate of compliance with the standards. The requirement for a certificate of compliance is in lieu of any requirement for a license for the facilities leased by the Corporation. The Act also provides that the Corporation may not operate the facilities unless the NRC makes a determination that the facilities are in compliance with the NRC standards to be established by October 24, 1994, or NRC approves a plan prepared by DOE for achieving compliance with such standards.

Title XI of the Act also provides that the NRC, in consultation with the Environmental Protection Agency (the "EPA"), shall review the operations of the Corporation to ensure that public health and safety are adequately protected. Further, Title IX of the Act provides the Corporation shall lease the gaseous diffusion facilities of DOE at Paducah, Kentucky and Portsmouth, Ohio for a six-year period, beginning July 1, 1993.

Pursuant to the Atomic Energy Act of 1954, as amended, including in particular the provisions of the Energy Policy Act of 1992 on regulation and certification as generally described above, NRC and DOE are issuing this joint statement of understanding (the "Joint Statement") to address matters relating to the process by which NRC will assume, and DOE will relinquish at the time and to the extent provided by law, responsibility for regulatory oversight under the Act for the DOE facilities leased by the Corporation as specified by the Energy Policy Act of 1992. In view of the explicit framework of the Act under which NRC is to assume responsibility for the radiological protection of the public health and safety and the common defense and security after NRC standards are established and become effective for that purpose, this Joint Statement of Understanding identifies certain responsibilities of NRC and DOE with respect to the process, provides for cooperation between NRC and DOE necessary to the successful implementation of the process, and serves such other purposes as may be related thereto.

In NRC requesting and DOE agreeing to supply information, DOE and NRC understand that the purpose is to help establish NRC's regulatory framework under the Act, not for NRC to establish oversight before NRC assumes regulatory jurisdiction over the facilities.

1. Under the Act, by October 24, 1994, NRC is directed to establish its standards to protect public health and safety and common defense and security for the facilities leased to the Corporation.

2. In order to support NRC in developing the standards identified in paragraph 1, DOE will supply available information, permit site visits, and provide other similar assistance in support of NRC standards development in response to NRC's request. In particular, DOE will provide any available description of the Safety Basis and Framework for DOE Oversight of the Gaseous Diffusion Plants, including:

(i) A description of the safety analyses, operational safety requirements, and the bases for maintaining the safety basis for the GDPs. The description will include the information which DOE relies on to demonstrate that the current regulatory base is adequate to protect the public health and safety and provide for the common defense and security.

(ii) A description of the operational requirements, consisting of the basic operational safety objectives, implementation requirements, implementation measures, status of conformance with the implementation requirements, and the corrective actions being taken to address non-conformances.

(iii) A description of DOE's program for continuing regulatory oversight over the GDPs, including a description of the program for compliance reviews and audits, followup actions to assure that audit findings are addressed, and the status of open audit findings.

At NRC's request, DOE will supply copies of applicable DOE Orders, other documents referenced in the aforementioned descriptions, and such other documents as are necessary to support NRC's standards development.

DOE will also permit NRC to locate observers at the facilities on or after July 1, 1993, to obtain information and knowledge that may be useful to NRC in developing or implementing its standards. Interim guidance for the NRC observers will be established by the DOE Regulatory Oversight Manager and the NRC covering the period before NRC assumes regulatory jurisdiction over the facilities.

3. As indicated above, the Energy Policy Act amendments to the Atomic Energy Act of 1954 condition NRC regulation (through the annual certification process) of the facilities leased to the Corporation on the promulgation of the new NRC standards. NRC anticipates that it will require the Corporation to file the first annual application for a certificate of compliance within six (6) months after promulgation by NRC of the standards. Thus, until such time as NRC has promulgated its standards and they have become effective and the first certification process based on NRC standards has been completed, DOE will continue to exercise its public health and safety and common defense and security regulatory oversight over the operation of the facilities.

4. During the entire period that the facilities are in operation, and thereafter as long as necessary, on a full cost reimbursable basis from the Corporation, DOE will retain responsibility for all access authorization programs with respect to the facilities leased by the Corporation and the Corporation itself. DOE will be responsible for the administrative determinations relating to granting, suspending, adjudicating, or denying a security clearance, and for reinvestigating an individual's background for continued access.

5. At all times during the period the facilities are in operation by the Corporation after NRC assumes responsibility for regulatory oversight, NRC will be responsible for granting security facility approvals and for establishing an information security program to ensure that Restricted Data, including both information and equipment, is appropriately classified and protected with respect to the facilities leased by the Corporation and the Corporation itself.

6. During the entire period that uranium enriched to 20 percent or more U^{235} is located at the Portsmouth facility, DOE will retain title to and possess such uranium and will be solely responsible for providing for, establishing and maintaining nuclear safety, safeguards and security controls applicable to such uranium. This Joint Statement is not a regulation and is not intended to create or alter legal requirements or obligations of NRC, DOE, the Corporation or any other interested person.

Dated: December 7, 1993.

For the Nuclear Regulatory Commission.

Ivan Selin,

Chairman, Nuclear Regulatory Commission.

Dated: December 20, 1993.

For the Department of Energy.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 94–2171 Filed 1–31–94; 8:45 am]

BILLING CODE 7590–01–P

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–0003, "Guide for the Preparation of Applications for Licenses for Non-Self-Contained Irradiators," and is intended for Division 10, "General." DG–0003 is being developed to provide guidance on preparing applications for new licenses, license amendments, and license renewals to possess radioactive material in non-self-contained irradiators, specifically panoramic dry-source-storage irradiators, underwater irradiators, and panoramic wet-source-storage irradiators.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 1, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 22 day of December 1993.

For the Nuclear Regulatory Commission.

Bill M. Morris,

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

[FR Doc. 94–2173 Filed 1–31–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by the Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Revisions:

Regulation S–X—File No. 270–3

Rule 2a–7—File No. 270–258

Rule 31a–1—File No. 270–173

Form N–1A—File No. 270–21

Form N–3—File No. 270–281

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted for OMB approval proposed amendments to Regulation S–X under the Securities Act of 1933 (1933 Act), rules 2a–7 and 31a–1 under the Investment Company Act of 1940 (1940 Act), and Form N–1A and N–3 under both the 1933 and 1940 Acts. These amendments pertain solely to investment companies that hold themselves out as money market funds ("funds").

The proposed amendment to Regulation S–X would require funds to identify in their portfolio schedules any institution providing a put or guarantee with respect to a portfolio security and to give a brief description of the nature of the put (*e.g.*, unconditional or conditional demand feature). It is estimated that each of the 1,000 money market funds preparing financial statements pursuant to Form N–1A would incur an annual estimated two burden hours annually to record this information in their portfolio schedules (one hour two times per year). The increase in burden resulting from this amendment will be reflected in the burdens associated with Forms N–1A and N–3.

The proposed amendments to rule 2a–7 would make a number of changes effecting primarily tax exempt funds. Among the amendments being proposed are:

(1) Limiting national tax exempt funds to holding no more than 5% of assets in securities of one issuer;

(2) Permitting single state funds to be undiversified, but limiting their investments to only first tier securities;

(3) Requiring prospectus disclosure regarding the increased risks associated with single state funds because of their geographical concentration and lack of diversification;

(4) Limiting an individual guarantor to guaranteeing no more than 10% of fund assets; and

(5) Requiring that funds obtain additional credit information about their investments that are subject to puts in certain situations.

It is estimated that each money market fund will incur an annual estimated 20 burden hours to comply with these requirements.

Rule 31a–1 would be amended to require funds to identify the provider of any put or guarantee with respect to a portfolio security and provide

information sufficient to identify, value, and account for each investment. It is estimated that the 1,000 funds subject to this requirement will incur an estimated twelve burden hours in order to comply with this change.

Form N–1A would be amended to require that tax exempt money market funds that restrict their investments to those that generate income exempt from federal, state and/or local taxes ("single state" funds) make certain disclosures in their prospectuses regarding the additional risks associated with geographic concentration and lack of issuer diversification. It is estimated that the 181 single fund Form N–1A registrants will incur an initial burden of two hours to comply with this requirement initially and less time in subsequent updates of the fund's registration statement.

Form N–3 is a required form of registration statement for insurance company separate accounts organized as management investment companies. The burden associated with Form N–3 reflects the change being made to Regulation S–X. A technical amendment being made to an instruction to Form N–3 will not affect the burden associated with Form N–3.

Direct general comments to Gary Waxman at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, (Paperwork Reduction Act numbers 3235–0009, 3235–0268, 3235–0178, 3235–0307, and 3235–0316), Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20543.

Dated: January 12, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2194 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33520; File No. 4–208]

Intermarket Trading System; Notice of Filing of Eleventh Amendment to the ITS Plan Relating to the Use of a Back-up System

January 25, 1994.

Purusant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 21, 1993, the Intermarket Trading System ("ITS") submitted to the Securities and Exchange Commission ("Commission") and amendment ("Eleventh Amendment") to the restated ITS Plan.[1] The ITS participants filed the proposal to make several technical amendments to the ITS Plan including amendments relating to the use of a back-up system. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description of the Amendment

The ITS amendment would: (1) Provide for use of a back-up system in the event ITS becomes inoperable; (2) recognize the use of the Regional Computer Interface ("RCI") by the Amex; (3) eliminate references to line costs and line sharing; (4) require a biennial rather than an annual audit by an independent public accountant; (5) change all references to the Midwest Stock Exchange, Inc. ("MSE") to CHX; and (6) correct the addresses of the CHX, CSE, and PSE.

The amendment would add section 15 of the ITS Plan to provide for the use of a back-up system. In the event the ITS system becomes inoperable, ITS would utilize a designated NYSE operating system ("NYSE System") on a preemptive and priority basis. The NYSE System is comprised of computers and peripheral equipment sufficient to operate ITS at a minimum 50% of the ITS's disk capacity. The NYSE System would assume the functions of the ITS within two hours in the event of a limited disaster and on the next day in the event of a full site disaster.

The proposal also would amend the ITS Plan to provide for the use of the RCI by the Amex through the Amex Display Book Manager ("DBM"). The Amex DBM is a computerized system that when fully implemented will, to some extent, replace the original ITS stations on the Amex trading floor. The proposal would permit communications, through the Amex DBM, between the ITS and the Amex floor.

The amendment would eliminate references in the ITS Plan to line costs and line sharing. Because of technological advances, references to line costs and line sharing are not longer applicable. The ITS Plan will continue to delineate development and production costs.

The proposal would amend the ITS Plan's audit provision to require a biennial rather than an annual audit, concerning expenses, allocations, and computations, by an independent public accountant. The proposal would require an internal audit to review all expenses, allocations, and computations concerning ITS for those years when an independent audit is not conducted.

The proposal also would provide other technical amendments to the ITS Plan. The proposal would change all references to the to the Midwest Stock Exchange, Inc. ("MSE") to CHX; and would correct the addresses of the CHX, CSE, and PSE.

II. 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 re 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 such filing will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to the file number in the caption above and should be submitted by February 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2121 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

The ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter ("OTC") market operated by the National Association of Securities Dealers, Inc. ("NASD"). The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

January 26, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Eckerd Corp.
Common Stock, $.01 Par Value (File No. 7–11919)
ACE Limited
Common Stock, $.125 Par Value (File No. 7–11920)
Amway Asia Pacific
Common Stock, $.01 Par Value (File No. 7–11921)
Avalon Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11922)
Ballard Medical
Common Stock, $.10 Par Value (File No. 7–11923)
Grancare, Inc.
Common Stock, No Par Value (File No. 7–11924)
Qualmed, Inc.
Common Stock, $.01 Par Value (File No. 7–11925)
Simon Property Group
Common Stock, $.0001 Par Value (File No. 7–11926)
Excel Realty Trust
Common Stock, $.01 Par Value (File No. 7–11927)
Levitz Furniture
Common Stock, $.01 Par Value (File No. 7–11928)
Morgan Stanley Emerging
Common Stock, $.01 Par Value (File No. 7–11929)
Schroder Asian Growth Fund
Common Stock, $.01 Par Value (File No. 7–11930)
Asia Tigers Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11931)
Grupo Televisa
Common Stock, No Par Value (File No. 7–11932)
Templeton China World
Common Stock, $.01 Par Value (File No. 7–11933)
Templeton Emerging Markets
Common Stock, $.01 Par Value (File No. 7–11934)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 16, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–2191 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

Janaury 26, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ahold Ltd.
American Depositary Receipts (each rep. 1 Common NGL 2.50) (File No. 7–11864)
Alumax, Inc.
Common Stock, $.01 Par Value (File No. 7–11865)
Bergen Brunswig Corp.
Class A Common Stock, $1.50 Par Value (File No. 7–11866)
Bufete Industrial S.A.
American Depositary Shares (rep. 3 Ord. Ptc. Ctf. (3 Ser. L sh. & 1 Ser. V sh.) (File No. 7–11867)
Camco International Inc.
Common Stock, $.01 Par Value (File No. 7–11868)
Coastcast Corp.
Common Stock, No Par Value (File No. 7–11869)
Continental Homes Holding Corp.
Common Stock, $.01 Par Value (File No. 7–11870)
Espirito Santo Overseas Ltd.
8.5% Non-Cm. Gtd. Pref. sh. Ser. A $25.00 Par Value (File No. 7–11871)
Fletcher Challenge, Ltd.
American Depositary Shares, Ord. Div. (rep. 10 Ord. Div. shs. NZ $.40 Par Value (File No. 7–11872)
GC Companies
Common Stock, $.01 Par Value (File No. 7–11873)
Grupo Casa Autry S.A. de C.V.
American Depositary Shares (rep. 4 Ord. sh. without Par Value) (File No. 7–11874)
Grupo Mexicano de Desarrollo S.A.
Ser. B American Depositary Shares (rep. 1 Ser. B sh. without Par Value) (File No. 7–11875)
Marcus Corp.
Common Stock, $1.00 Par Value (File No. 7–11876)
Matlack Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7–11877)
Maxus Energy Corp.
$2.50 Cm. Pfd., $1.00 Par Value (File No. 7–11878)
Simon Property Group, Inc.
Common Stock, $.0001 Par Value (File No. 7–11879)
Syratech Corp.
Common Stock, $.01 Par Value (File No. 7–11880)
Tanger Factory Outlet Centers, Inc.
Depositary Shares (rep. 1/10 sh. Ser. A Cum. CV. Red. Pfd. Shs., $.01 Par Value (File No. 7–11881)
Valspar Corp.
Common Stock, $.50 Par Value (File No. 7–11882)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 16, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–2193 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33522; File No. SR–NASD–94–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board® Service Through April 1, 1994

January 26, 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 21, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on the Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as "unlisted securities").[2] Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that expires on February 1, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through April 1, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.[4]

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on 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 NASD 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

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending December 31, 1993, the Service reflected the market making positions of 368 NASD member firms displaying quotations/indications of interest in approximately 4,178 unlisted securities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's Operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"), particularly section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(6) and (11), and section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] The Commission notes that, in addition to unlisted securities, certain securities listed on a regional exchange may now be eligible for OTCBB quotations. Specifically, on January 24, 1994, the Commission approved an NASD proposal to expand the universe of securities eligible for quotation in the OTC Bulletin Board to include securities which: (1) are listed on one or more regional stock exchanges; and (2) do not meet the requirements for dissemination of transaction reports through the facilities of the Consolidated Tape ("non-Tape B securities"). Securities Exchange Act Release No. 33507 (January 24, 1994) (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 33290 (December 3, 1993), 58 FR 64990 (December 10, 1993).

[4] On July 16, 1993, the Commission approved an NASD rule change to establish real-time trade reporting requirements for members' transactions in OTCBB Service-eligible securities. The new requirements became effective on December 20, 1993, and supplant the price and volume reporting requirements under section 2 of Schedule H to the NASD By-Laws. Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system to section 17B(b) of the Act. On December 30, 1992, the Commission granted "Qualifying Electronic Quotation System" status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. The OTCBB will retain its QEQS status for the term of the proposed extension.

quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through April 1, 1994 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,178 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

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 form 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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 22, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provide that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in unlisted securities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional exchanges and quoted in the OTCBB by NASD members.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through April 1, 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. 94–2197 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange; Inc.

January 26, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Cytec Industries
Common Stock, $.01 Par Value (File No. 7–11912)

Eastman Chemical Company
Common Stock, $.01 Par Value (File No. 7–11913)

Koger Equity, Inc.
Warrants to purchase one share of Common Stock at $8.00 a share (File No. 7–11914)

Countrywide Mortgage Investment, Inc.
Common Stock, $.01 Par Value (File No. 7–11915)

Grupo Financiero Serfin, S.A.
American Depositary Shares (rep. 4 Series L shares) (File No. 7–11916)

Grupo Mexicano de Desarrollo S.A.
Units consisting of one Series L, one Series B share (File No. 7–11917)

Grupo Televisa S.A.
Global Depositary Shares (rep. 2 Ord. Pfd. Ctd. rep. one A, L & D share) (File No. 7–11918)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 16, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of

fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–2190 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 26, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

First Maryland Bancorp
7.875 Pc Non. Cum. Pfd. Stock (File No. 7–11935)
Stewart Information Services Corporation
Common Stock, $1.00 Par Value (File No. 7–11936)
Paine Webber Premier Intermediate Tax Free Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11937)
Commercial Net Lease Realty, Inc.
Common Stock, $0.01 Par Value (File No. 7–11938)
Kendall International, Inc.
Common Stock, $1 Par Value (File No. 7–11939)
Osmonics, Inc.
Common Stock, $.01 Par Value (File No. 7–11940)
Duke Power Company
6.375 Pfd. Stock, $25 Par Value (File No. 7–11941)
Brown Forman Corporation
$0.40 Nv. Cum. Pfd Stock (File No. 7–11942)
Brown Forman Corporation
Class A Common Stock, $0.15 Par Value (File No. 7–11943)
Brown Forman Corporation
Class B Common Stock, $0.15 Par Value (File No. 7–11944)
Travelers, Inc.
$2.03 Preferred Stock (File No. 7–11945)
Travelers, Inc.
$2.315 Preferred Stock (File No. 7–11946)
Freeport McMoran Copper & Gold, Inc.
Depositary Shares Series 2 (File No. 7–11947)
Dimark, Inc.
Common Stock, No Par Value (File No. 7–11948)
Grupo Televisa, S.A.
Global Depositary Shares (File No. 7–11949)
Franklin Select Real Estate Income Fund
Series A Common Stock, No Par Value (File No. 7–11950)
Franklin Realty Estate Income Fund
Series A Common Stock, No Par Value (File No. 7–11951)
Rowe Furniture Corporation
Common Stock, $1.00 Par Value (File No. 7–11952)
Savannah Electric and Power Co.
$6.64 Pc Pfd. Stock, $25 Par Value (File No. 7–11953)
American Insured Mortgage Investors
Dep. Units of Limited Partnership Interest Series 86 (File No. 7–11954)
American Insured Mortgage Investors
Dep. Units of Limited Partnership Interest Series 88 (File No. 7–11955)
JP Realty, Inc.
Common Stock, $.0001 Par Value (File No. 7–11956)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 16, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–2192 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications, for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

January 26, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Colonial Data Technologies Corp.
Common Stock, $.01 Par Value (File No. 7–11883)
Kendall International, Inc.
Common Stock, $.01 Par Value (File No. 7–11884)
Osmonics, Inc.
Common Stock, $.01 Par Value (File No. 7–11885)
Stewart Information Services Corporation
Common Stock, $1.00 Par Value (File No. 7–11886)
Sunstates Corporation
Common Stock, $.33⅓ Par Value (File No. 7–11887)
Cytec Industries, Inc.
Common Stock, $2.50 Par Value (File No. 7–11888)
DDL Electronic, Inc.
Common Stock, $.01 Par Value (File No. 7–11889)
MHI Group, Inc.
Common Stock, $.40 Par Value (File No. 7–11890)
Eastman Chemical Company
Common Stock, $.01 Par Value (File No. 7–11891)
Hadson Corporation
Common Stock, $.10 Par Value (File No. 7–11892)
Huntway Partners, L.P.
Com Units (representing Limited Partners Interest, Evidence by Depository Receipts) No Par Value (File No. 7–11893)
Jardine Fleming China Region Fund, Inc.
Rights to Subscribe, No Par Par Value (File No. 7–11894)
Koger Equity, Inc.
Common Stock, $.01 Par Value (File No. 7–11895)
Latin American Discovery Fund, Inc.
Rights to Subscribe, No Par Value (File No. 7–11896)
Aviall, Inc.
Common Stock, $.01 Par Value (File No. 7–11897)
Southern Union Company
Rights to Subscribe, No Par Value (File No. 7–11898)
Travlers, Inc.
Common Stock, $.01 Par Value (File No. 7–11899)
Triarc Companies, Inc.
Common Stock, $.10 Par Value (File No. 7–11900)
U.S. West, Inc.
Common Stock, $1.00 Par Value (File No. 7–11901)
American Insured Mortgage Investors L.P.
(Series 86) No Par Value, Dep. Units of Limited Partnership Interest (file No. 7–11902)
American Insured Mortgage Investors L.P.
(Series 88) No Par Value, Dep. Units of Limited Partnership Interest (File No. 7–11903)
Barclays Bank, Plc
Prf. Series A, No Par Value; Prf. Series B, No Par Value; Prf. Series C, No Par Value; Prf. Series D, No Par Value (File No. 7–11904)
Blackrock Municipal Target Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–11905)
Franklin Real Estate Income Fund
Series A Common Stock, No Par Value (File No. 7–11906)
Franklin Select Real Estate Income Fund

Series A Common Stock, No Par Value (File No. 7–11907)
GC Company
Warrants, No Par Value (File No. 7–11908)
Grupo Mexicano de Desarrollo
Series B, American Depository Shares, No Par Value (File No. 7–11909)
JP Realty, Inc.
Common Stock, $.0001 Par Value (File No. 7–11910)
Rowe Furniture Corp.
Common Stock, $1.00 Par Value (File No. 7–11911)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 16, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Kartz,

Secretary.

[FR Doc. 94–2187 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33510; File No. SR–NASD–93–4]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Issuer Disclosure of Material Information to the Public and to the NASD

January 24, 1994.

On February 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal amends Schedule D, Part II, Sections 1(c)(17) and 2(e)(16), and the Interpretation "Notification to NASD of News Releases."[3]

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on March 16, 1993.[4] No comments were received on the proposal. This order approves the proposed rule change.

The NASD is amending the issuer disclosure requirements of Schedule D to conform its rules to reflect current NASD practice with regard to market surveillance, trading halts, and the confidentiality of information provided to the NASD, and to clarify issuers' obligations to respond to NASD inquiries and to disclose information to the public in certain circumstances under NASD rules. Currently, Nasdaq issuers must provide full and prompt responses to "all requests for information" by the NASD. Nevertheless, as a matter of practice, the NASD only makes request to issuers for information relating to unusual market activity or to events that may have a material impact on the trading of the issuer's securities in the Nasdaq System. In particular, the rule change also clarifies that the Market Surveillance Department is required to maintain the confidentiality of non-public information provided by Nasdaq issuers, including denial of rumors, and to use such information only for regulatory purposes.

The NASD is amending Schedule D to provide that issuers need not make public disclosure of material events where it is possible to maintain confidentiality of those events and immediate disclosure would prejudice the ability of the issuer to pursue its objectives. The rule change provides that if rumors or unusual market activity indicate that information on impending developments has become known, a clear public announcement may be required with respect to such developments. In addition, the NASD believes that it may be appropriate in certain circumstances for the issuer publicly to deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading of its securities, or would likely have a bearing on investment decisions.[5]

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6) of the Act.[6] The rule change will provide Nasdaq issuers with useful guidance regarding disclosure obligations under the Nasdaq listing agreement with respect to confidential information. Nevertheless, the Commission cautions issuers and counsel that the requirements of Schedule D regarding issue disclosure of material information are not interpretations of the disclosure requirements of federal and state securities laws,[7] and that federal and state law requirements should also be carefully considered regarding the disclosure of material non-public information.[8] As the Commission has stated, "[t]he importance of accurate and complete issuer disclosure to the integrity of the securities markets cannot be overemphasized. To the extent that investors cannot rely upon the accuracy and completeness of issuer statements, they will be less likely to invest, thereby reducing the liquidity of the securities markets to the detriment of investors and issuers alike * * *."[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the rule change in SR–NASD–93–4 be, and hereby is, approved, effective April 15, 1994.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See NASD Manual, (CCH) ¶¶ 1803, 1806A.

[4] Securities Exchange Act Release No. 31972 (March 10, 1993), 58 FR 14234.

[5] Of course, as the Commission has noted,

[w]henever an issuer makes a public statement or responds to an inquiry from a stock exchange official concerning rumors, unusual market activity, possible corporate developments or any other matter, the statement must be materially accurate and complete. If the issuer is aware of nonpublic information concerning acquisition discussions that are occurring at the time the statement is made, the issuer has an obligation to disclose sufficient information concerning the discussions to prevent the statements made from being materially misleading.

In the Matter of Carnation Company, Securities Exchange Act Release No. 22214 (July 8, 1985), 33 SEC Doc. 874, 877.

[6] 15 U.S.C. 78*o*–3(b)(6). Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[7] See also NASD Manual, Schedule D to the By-Laws, Part II, Sec. 1(c)(18), (CCH) ¶ 1803 ("The issuer shall comply with any obligation of any person regarding filing or disclosure of information material to the issuer or the security, whether such obligation arises under the federal securities laws and the rules and regulations promulgated thereunder or other applicable federal or state statutes or rules."). See also NASD Manual, Schedule D to the By-Laws, Part II, Sec. 2(e)(17), (CCH) ¶ 1804.

[8] The rule change reflects that the NASD bases its determination of materiality on a "reasonable" shareholder standard—that is, would a reasonable shareholder consider the information important in deciding whether to purchase or sell securities.

[9] See Carnation Company, 33 SEC Doc. at 877 (footnotes omitted).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2124 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33521; File No. SR–NYSE–93–53]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to its Stock Allocation Policy and Procedures

January 25, 1994.

On December 30, 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 as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The NYSE requests accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a clarification of the Exchange's intent with respect to Section V of the Exchange's Allocation Policy and Procedures ("Allocation Policy").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to clarify the Exchange's intent with respect to Section V of the Exchange's Allocation Policy. The intent of the Exchange's Allocation Policy, as amended in File No. SR–NYSE–92–15, with respect to spin-offs, listings of related companies and relistings of companies, is to honor the request of a listing company that its stock not be allocated to its former specialist unit, or the specialist in the parent or related company.[3]

The Exchange emphasizes that specialist performance is, and will continue to be, the key determinant in allocation decisions. In honoring the request of a listing company not to be allocated to its former specialist unit, it should be emphasized that a review of the applicants for listing will continue to be based on specialist performance.

(b) Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Allocation Policy acts to provide for the public interest in emphasizing that specialist performance is the key determinant in allocation decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–53 and should be submitted by February 22, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that this clarifying amendment to Section V of the NYSE Allocation Policy is consistent with Section 6(b)(5) of the Act,[4] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[5] and Rule 11b–1 thereunder,[6] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

The Allocation Policy was approved for a one year pilot period and expires on October 28, 1994. Approval of this clarifying amendment is also made on a temporary basis and will expire on October 28, 1994, the same date as the expiration of the Allocation Policy as amended in File No. SR–NYSE–92–15.

The Commission believes that the recently amended Allocation Policy should enhance the Exchange's allocation process, encourage improved specialist performance and, thereby, protect investors and the public interest. The Commission believes that the

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The Commission recently approved a NYSE proposal on a one-year pilot basis that revised, among other things, the allocation criteria, the composition of the Allocation Committee and Allocation Panel, and the Committee's disclosure policy. See Securities Exchange Act Release No. 33121 (October 29, 1993), 58 FR 59085 (November 5, 1993) (order approving File No. SR–NYSE–92–15). The pilot expires on October 28, 1994.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 15 U.S.C. 78k(b) (1988).

[6] 17 CFR 240.11b–1 (1993).

NYSE's clarifying amendment is consistent with the Exchange's Allocation Policy.

The NYSE's amendment clarifies that the Allocation Policy, as it relates to spin-offs, listing of related companies and relistings, provides that the Exchange will honor a listing company's request that its stock not be allocated to its former specialist unit or the specialist in the parent or related company. The Commission notes that the Exchange emphasizes that a review of the applicants for listing will continue to be based on specialist performance and that the Exchange will continue to use performance as the key determimant in allocation decisions.

In its order approving the NYSE's revised Allocation Policy, the Commission stated that a listing company's preference should not be allowed to take significance over or negate the specialist's performance.[7] The Commission continues to believe that performance is the most significant determinant in allocation decisions. In the Commission's view, performance-based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.

The Commission believes that the NYSE's amendment is consistent with the order approving the Allocation Policy, because the Exchange will continue to use specialist performance as a key determinant while at the same time honoring a listing company's request not to be assigned to its former specialist unit or the specialist in the parent or related company. The Commission recognizes that in making listing decisions, companies involved in a spin-off or the listing of related companies or former listed companies, having had direct prior experience with a particular specialist, might have legitimate reasons to request that the specialist not be allocated to its securities. The Commission is confident that the NYSE specialist base is broad enough to ensure that the NYSE can continue to use specialist performance as the key determinant, while at the same time responding to a listing company's request with respect to a specialist with whom the company has had prior experience.[8]

The Commission finds good cause for accelerated approval of the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. This will permit the Exchange to continue to efficiently administer its stock allocation process, especially with respect to listing of spin-offs or related companies. Furthermore, the NYSE's proposal clarifies amendments that are identical to amendments in File No. SR-NYSE-92-15 that were published in the Federal Register for the full comment period and no comments were received.[9]

It is therefore ordered, pursuant to Section 19(b)(2) under the Act,[10] that the proposed rule change (SR-NYSE-93-53) is hereby approved until October 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 94-2123 Filed 1-31-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33511; File No. SR-CBOE-93-18]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change Relating to Floor Broker Requirements for Trading FLEX Options

January 24, 1994.

On April 19, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to eliminate the minimum net liquidating equity requirement for floor brokers.

Notice of the proposed rule change appeared in the Federal Register on April 29, 1993.[3] No comments were received on the proposed rule change. This order approves the proposal.

Under current CBOE rule 24A.13(b), any CBOE member acting as a floor broker must maintain at least $100,000 in net liquidating equity to be eligible to effect FLEX Option transactions. At the same time, Rule 24A.15(b) separately requires each floor broker that participates in FLEX Options trading to obtain a letter of authorization from a clearing member specifically accepting responsibility for the clearance of the floor broker's FLEX Options transactions. Based on the CBOE's experience with FLEX Options trading, the Exchange believes that the clearing member letter of authorization requirement, by itself, is sufficient to assure the financial integrity of floor brokers. The separate minimum net liquidating equity requirement appears to the CBOE to be unnecessary. There is not a similar requirement that applies to floor brokers acting with respect to any other currently-traded CBOE product.[4] Accordingly, the CBOE maintains that the only effect of the existing minimum net equity requirement is to give larger floor brokers exclusive access to the FLEX Options market, without any regulatory justification. As a result, the CBOE proposes to eliminate the minimum net liquidating equity requirement applicable to floor brokers.

The purpose of this proposal is to enable the CBOE to increase the number of its floor brokers who are eligible to facilitate FLEX Options transactions, and thereby, enhance competition and increase the potential for exchange member participation in the FLEX Options market. This change would be achieved by eliminating paragraph (b) from Rule 24A.13.

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).[5] Specifically, the Commission believes that the net equity liquidating requirement for FLEX Options floor brokers is unnecessary given that a letter of authorization from a clearing member accepting responsibility for clearance of the floor broker's FLEX Options transactions is required for each FLEX Options floor broker. Moreover, the letter of authorization would cover any unmatched trades facilitated by the Flex Options floor broker.[6]

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[7] See Securities Exchange Act Release No. 33121, *supra* note 3.

[8] According to the Exchange, there are currently 40 specialist units registered with the NYSE. Telephone conversation between Donald Siemer, Market Surveillance, NYSE, and Louis A. Randazzo, Attorney, Commission, on January 25, 1994.

[9] See Securities Exchange Act Release No. 31427 (November 10, 1992), 57 FR 54433 (November 18, 1992).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1993)

[3] See Securities Exchange Act Release No. 32198 (April 23, 1993), 58 FR 26013.

[4] Clearing member letters of authorization have proven sufficient, in the option of the Exchange, for financial responsibility and performance assurance purposes.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] In addition, since the inception of FLEX Options trading on the Exchange in February, 1993, the Exchange has not experienced any problems with regard to "error" or unmatched trades among FLEX Options market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–93–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2120 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33512; File No. SR–Phlx–93–08]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to Floor Procedure Advice F–2 Regarding Time Stamping, Matching, and Access to Matched Trade Tickets

January 24, 1994.

On March 29, 1993, the Philadelpia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Floor Procedure Advice ("Phlx Advice") F–2, currently titled "Responsibility for Time Stamping and Matching. Notice of the proposal appeared in the **Federal Register** on September 1, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Phlx has proposed the following amendments to Phlx Advice F–2: (1) Renaming Phlx Advice F–2, "Time Stamping, Matching and Access to Matched Trades;" (2) requiring matched tickets to be submitted to the specialist post immediately upon execution; (3) requiring an execution time stamp on the reverse side of a trade ticket; (4) adding provisions limiting access to matched trade tickets to participants in the transaciton, the specialist in that option and floor officials acting in that capacity; (5) requiring specialist approval to access matched trade tickets; and (6) requiring specialists to keep matched tickets for a minimum of three years.

Phlx Advice F–2 currently spells out the responsibilities pertaining to time stamping and matching floor tickets, imposing this duty upon the largest participant of a trade, or, where there is one buyer and one seller, upon the seller. The Phlx is proposing to separate Phlx Advice into three sections. Section (a) would contain the current time stamping and matching responsibilities as well as two additions. First, trade participants would be required to submit matched tickets to the appropriate person at the specialist post immediately upon effecting a transaction in order to assure that the initiating party agrees with each contra-party's claim as to his or her level of participation as well as to ensure that the terms of the trade are correct. The Commission believes that immediate submissions also lessen the potential for losing a matched ticket before entry into Exchange trade comparison systems. Second, an execution time stamp would be required on the reverse side of the order ticket to distinguish the execution and order entry times for surveillance and audit trail purposes.

Becuase the Phlx is proposing to add provisions relating to access to matched trades to Advice F–2, the Exchange proposes to rename this Advice "Time Stamping, Matching and Access to Matched Trades." In this regard, the Phlx seeks to limit access to matched trade tickets to those with a legitimate interest: participants, the specialist in that option, and a floor official acting in that capacity. Intra-day, matched trade tickets are kept behind the specialist post on the floor after being electronically entered into the Exchange's trade comparison systems so that errors can be corrected. Thus, the Phlx is also proposing to require prior specialist permission before looking through these tickets. The Commission believes that limiting access should reduce the number of instances where floor personnel access trade tickets to discern customers' identities or to ascertain trading patterns. In addition, the Commission believes that supervising access to trade tickets should provide accountability for persons who access such tickets and help ensure that the trade tickets are returned to the specialist post in a timely manner.

Matched trade tickets serve important surveillance and operations functions. Once a trade has been processed for trade dissemination and clearing, it is then left in the possession of the attendant specialist. Accordingly, the Phlx is prosing to not only limit access to these tickets, but also to require specialists to keep all matched trade tickets in their possession for a period of three years, whether or not the specialist participated or acted as agent in any such trade.

Advice F–2 is applicable to both the equity options and foreign currency options floors. Accordingly, the Phlx proposes adding the notation "OF" after Advice F–2. This notation indicates that the advice is applicable to the Phlx options floor and the Phlx foreign currency option floor. In addition, the Phlx proposes to increase the fine schedule for this Advice and to apply the new fines on a three-year cycle, such that repeat violations during the same three-year period would result in escalating fines.[4]

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)[5] in that the proposal is designed to prevent fraudulent acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. Specifically, the Commission believes that the proposed rule change will help ensure prompt and accurate trade reporting, will increase the performance of the Exchange's audit trail and other surveillance-related trade comparison systems, and provide appropriate fines for failing to perform the duties imposed by the rule change. Moreover, the Commission believes that the Exchange's proposed supervision of access to the saved trade tickets will serve as an adequate measure to prevent such information from being used for improper purposes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–93–08) is approved.

For the commission, by the Division of Market Regulations, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2119 Filed 01–31–94; 8:45 am]

BILLING CODE 8010–01–M

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[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19–4 (1992).

[3] See Securities Exchange Act Release No. 32792 (August 24, 1993), 58 FR 46263.

[4] Under the rolling three-year cycle, if there is no violation of Advice F–2 for three years, the next violation would be treated as a first occurrence. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second occurrence would be treated as a third occurrence, even though more than three years may have elapsed after the first occurrence.

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 15 U.S.C. 78s(b)(2) 1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC-20037; 811-4591]

Connecticut Liquidity Investment Fund, Inc.; Application for Deregistration

January 26, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Connecticut Liquidity Investment Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 5, 1993 and amended on December 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549 Applicant, c/o Mr. Lindsey Pinkham, Secretary, c/o Connecticut Bankers Association, 450 Church Street, Hartford, CT 06103.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, (202) 504-2259, or Barry D. Miller, Senior Special Counsel, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management company organized as a corporation under the laws of the State of Maryland. On or about February 21, 1986, applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act. On May 28, 1986, applicant filed a registration statement on Form N-1A with the Commission.

2. In reliance on the advice and recommendation of applicant's independent auditor and legal advisors, in 1985 applicant distributed a written offering memorandum dated April 3, 1985 to certain institutional investors within the state of Connecticut, who were the only entities eligible to purchase shares of the Fund. The offering memorandum repeatedly described applicant as an unregistered investment company and stated that applicant was not an investment company as defined by the Act because its securities were beneficially owned by not more than one hundred persons and registration was therefore not required. Applicant's shares are not registered under the Securities Act of 1993 and have never been publicly offered. When the application was filed, applicant had twenty-nine securityholders.[1] Applicant operated as an unregistered investment company from on or about April 23, 1985 to February 1986.

3. In or about January 1986, applicant's independent auditor and legal advisors became aware that applicant was not qualified as a regulated investment company so as to be entitled to favorable income tax treatment that would permit applicant to pass all or virtually all of its income to its shareholders without it being liable to pay Federal or state corporate income tax. Upon learning this information in February 1986, applicant promptly took steps to register with the SEC as an investment company under the Act and thereby qualify itself prospectively as a regulated investment company under the Code.

4. Shortly after applicant discovered that it was not qualified as a regulated investment company under the Code, applicant redeemed all of its securityholders' investments in applicant's securities, with the exception of a nominal 100 shares per securityholder (which amount was deemed by applicant necessary to be retained so that applicant could have shareholders able to function as such). In mid-1986, when applicant was faced with approximately $5.8 million in unfunded income tax liabilities attributable to applicant's failure to register under the Act, applicant requested, and applicant's securityholders voluntarily paid an aggregate assessment of approximately $5.8 million, so that applicant would have the funds necessary to satisfy its tax obligation. Applicant promised to pay its securityholders on a proportional *pro rata* basis whatever monies applicant recovered from any litigation against its former professional advisors.

5. In May, June, and August 1986, applicant was required to and did pay an aggregate of approximately $5,885,861 in Federal and Connecticut corporate income taxes and interest for the tax years ended September 30, 1985 and February 28, 1986.

6. In 1987, applicant sued its former independent auditor and legal advisors to recover the Federal and Connecticut corporate income taxes and interest that applicant had had to pay. On or about May 7, 1987, applicant also filed amended returns with the Internal Revenue Service (the "IRS") for the fiscal year ending September 30, 1985 and February 28, 1986, and claimed a refund of Federal corporate income taxes paid in the amount of $1,733,668 and $2,877,162 respectively. In or about December 1987, applicant filed amended tax returns with the Connecticut Department of Revenue Services for the fiscal years ending September 30, 1985 and February 28, 1986, and claimed a refund of Connecticut corporate income taxes paid. The amount of applicant's Connecticut refund claims is approximately $1,641,000 including interest through June 30, 1993.

7. In December 1991, the litigation with applicant's former legal advisors was settled. Under the terms of the settlement agreement, the former legal advisors paid applicant a cash settlement, the net proceeds of which (after applicant's expenses for legal and accounting fees) were distributed to applicant's securityholders in December 1991. On May 27, 1992, applicant settled its claims with its former independent auditor. One of the terms of the settlement was that the former independent auditor would assume complete responsibility for the prosecution of applicant's Federal and state refund claims, applicant would give its former independent auditor a power of attorney, and the former independent auditor would guarantee a certain cash payment to applicant. In the event that the former independent auditor was able to recover a refund above this guaranteed amount from applicant's Federal and state refund claims, it would equally split with applicant the proceeds above the guaranteed amount.

[1] Applicant's security holders include the Federal Deposit Insurance Corporation as receiver for the New England Savings Bank, which failed on or about May 18, 1993.

8. In April 1993, the former independent auditor was able to obtain for applicant a Federal refund in the amount of $3.7 million plus interest accrued thereon. The $3.7 million plus interest Federal refund, however, was not all received in cash from the IRS, as the IRS made certain pre-refund deductions relating to certain tax deductions which had been made by applicant's shareholders. Thus, applicant only received approximately $1.3 million in cash from the IRS. Under the terms of the May 27, 1992 settlement agreement, applicant owned its former independent auditor a total of $2,559,868.90, of which applicant was only able to pay $1,873,587.25. Accordingly, applicant still owes its former independent auditor $686,281.75, which applicant hopes to pay with the proceeds from its Connecticut corporate tax refund claims. These claims were initially rejected on or about August 25, 1993 by the Connecticut Department of Revenue Services and applicant, acting through a power of attorney previously granted to its former independent auditor, intends to appeal such rejection to the Appellate Division of the Connecticut Department of Revenue Services. Applicant does not believe that it is likely that it will recover any amount on its fifty percent share of its pending refund claims in excess of the $686,282 liability due to its former independent auditor. Any net amount recovered by applicant will be applied first to satisfy the outstanding liability to applicant's former independent auditor, applicant's only creditor. Any balance remaining will then be distributed to applicant's securityholders.

9. On July 1, 1993, applicant's board of directors and securityholders determined that it was advisable that applicant be dissolved. Applicant's board of directors unanimously adopted a resolution declaring that the dissolution of applicant was advisable and directing that the proposed dissolution be submitted for consideration to applicant's shareholders at their annual meeting. The board of directors also authorized and directed applicant's officers to take any and all steps necessary and appropriate to effectuate the dissolution of applicant in accordance with applicable Maryland law, including the filing of articles of dissolution with the State of Maryland and the filing of Form N–8F with the Securities and Exchange Commission. Applicant's securityholders approved the dissolution of applicant by a vote of 66,177 shares in favor and none opposed (representing approximately ninety-three percent of the outstanding stock voting in favor, with sixteen securityholders present and voting in person and nine securityholders voting by written proxy), in accordance with the applicable provisions of Maryland law, and authorized applicant's board of directors and officers to take all steps necessary and appropriate to effectuate such dissolution, including the filing of articles of dissolution with the State of Maryland and the filing of the application on Form N–8F with the Commission.

10. Approximately $6,500 in cash has been retained in applicant's bank accounts to pay miscellaneous liquidation and dissolution expenses, including any additional attorney's fees and accounting fees for the dissolution of applicant and for the preservation of applicant's pending Connecticut income tax refund claims. Applicant also has assets in the form of prepaid retainers with its auditors and counsel for services rendered and to be rendered on and after September 1, 1993.

11. As of September 10, 1993, applicant had 70,301 shares outstanding of its common stock and the net asset (liability) value attributable to such common stock was a net liability of $654,734.46 or $9.31 per share. These numbers do not include applicant's one-half interest in its Connecticut income tax refund claims.

12. Applicant's expenses incurred or to be incurred in connection with its liquidation include: (i) A $50.00 filing fee payable to the State of Maryland upon the filing of applicant's Articles of Dissolution; (ii) accounting fees incurred and to be incurred for the preparation of applicant's final Federal and Connecticut corporation income tax returns, and amendment(s) to prior years' returns, and advice in connection with the prosecution of applicant's pending Connecticut income tax refund claims, in the aggregate amount of approximately $15,000; and (iii) attorneys' fees and disbursements incurred and to be incurred in connection with the prosecution of applicant's pending Connecticut income tax refund claims, negotiations on behalf of the applicant with the one outstanding creditor of applicant, the preparation of Articles of Dissolution and the application for deregistration, and advice related thereto, in the approximate amount of $30,000. These expenses were paid out of applicant's assets and thereby reduced the net asset (liability) value of all outstanding shares of applicant's common stock.

13. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

14. Applicant intends to file articles of dissolution to effectuate its dissolution, as required under Maryland law.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2195 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20036; 812–8746]

Kemper Blue Chip Fund, et al.; Application for Exemption

January 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Kemper Blue Chip Fund, Kemper Adjustable Rate U.S. Government Fund, Kemper Diversified Income Fund, Kemper Environmental Services Fund, Kemper Global Income Fund, Kemper Growth Fund, Kemper High Yield Fund, Kemper Income and Capital Preservation Fund, Kemper International Fund, Kemper Municipal Bond Fund, Kemper Retirement Fund, Kemper Short-Term Global Income Fund, Kemper Small Capitalization Equity Fund, Kemper State Tax-Free Income Series, Kemper Technology Fund, Kemper Total Return Fund, Kemper U.S. Government Securities Fund, Sterling Funds (the "Funds"), Kemper Financial Services, Inc. ("KFS"), the Funds' investment adviser and principal underwriter, and any other open-end registered investment company, existing or established in the future, for which KFS or any other person directly or indirectly controlling, controlled by or under common control with KFS serves or may serve as investment adviser or principal underwriter with the same traditional front-end load sales charge structure for which the imposition of the proposed contingent deferred sales charge would be appropriate.[1]

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act

[1] Certain Funds do not presently intend to rely on the requested relief and have not signed the application, but in the future they may rely on any order granted pursuant to the application if they determine to impose a CDSC applicable to sales of shares sold at net asset value in accordance with the representations and conditions in the application.

from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would amend a prior order (the "Prior Order") that permits the imposition and, under certain circumstances, waiver of a contingent deferred sales charge ("CDSC") on certain redemptions.[2] Applicants seek to amend the Prior Order to (a) include Sterling Funds as a named applicant and (b) expand the definition of the group of investment companies that may rely on the order.

FILING DATE: The application was filed on December 29, 1993. In a letter dated January 18, 1994, applicants' counsel has stated that an amendment, the substance of which is incorporated herein, will be filed 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 22, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 120 South LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 504–2406 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Prior Order permits one or more applicants, excluding Sterling Funds, and any other open-end registered investment company established in the future, that may become a member of a "group of investment companies," as that phrase is defined by rule 11a–3 under the Act, that is advised or distributed by KFS, to impose a CDSC in certain situations. The present application, which adds Sterling Fund as an applicant, seeks to amend the Prior Order by broadening the class of investment companies to which the order would apply to include applicants and any other open-end registered investment company or series thereof, existing or established in the future, for which KFS or any other person directly or indirectly controlling, controlled by or under common control with KFS serves or may serve as investment adviser or principal underwriter, notwithstanding the failure of one or more of such investment companies or series to be a member of a "group of investment companies" as that phrase is defined by rule 11a–3 of the Act.

2. The Funds are open-end management investment companies organized as Massachusetts business trusts pursuant to separate Declarations of Trust. KFS provides investment advisory and other services to, and serves as principal underwriter for, the Funds.

3. The Funds currently offer their shares for sale at net asset value plus a front-end sales charge. The Funds have eliminated the front-end sales charge on (a) purchases of $1,000,000 or more, including purchases made pursuant to various combined purchases, letter of intent, and cumulative discount features described in each Fund's prospectus and, for certain Funds, (b) purchases by an employer-sponsored employee benefit plan, provided that such plan has not less than 1,000 eligible employees and is maintained on the subaccount record keeping system made available through KFS ("NAV Purchase Privilege").

4. The Funds propose to impose a CDSC on the proceeds of certain redemptions of shares purchased pursuant to the NAV Purchase Privilege. Shares of the Funds are sold at net asset value under the NAV Purchase Privilege only if another privilege to purchase the shares at net asset value is unavailable. The CDSC will be imposed only in connection with redemption of shares purchased under the NAV Purchase Privilege and only in the event of a redemption transaction within a specified period, currently 12 months (the "CDSC Period"), following the share purchase. The CDSC currently is 1.0 percent of the amount of shares redeemed within one year of purchase. No CDSC would be imposed when the investor redeems shares held for longer than the CDSC Period or redeems reinvestment of income and capital gains dividends or appreciation on shares.

5. Applicants currently intend to waive the CDSC in the event of one or more of the following instances: (a) Redemption of shares of a shareholder (including a registered joint owner) who has died; (b) redemption of shares of a shareholder (including a registered joint owner) who, after purchase of the shares being redeemed, becomes totally disabled as evidenced by a determination by the Federal Social Security Administration; (c) limited automatic redemptions as set forth in the prospectus pursuant to a Fund's systematic withdrawal plan; and (d) redemptions in connection with (i) distributions to participants or beneficiaries of plans qualified under the Internal Revenue Code of 1986, as amended from time to time ("IRC"), section 401(a), custodial accounts under IRC section 403(b)(7), individual retirement accounts under IRC section 408(a), deferred compensation plans under IRC section 457 and other employee benefit plans (collectively, "plans"), (ii) participant-directed changes in investment choices in participant-directed plans, and (iii) returns of excess contributions to these plans.

6. KFS currently intends to credit a shareholder's account in full (*i.e.*, pay directly into the shareholder's account) for any CDSC paid in connection with the redemption of any shares followed by a reinvestment of the redemption proceeds in any of the Funds within sixty days after such redemption.

Applicants' Condition

If the requested order is granted, applicants expressly consent to the following condition: applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Rel. No. 16619 (November 2, 1988), (including any modifications that are proposed prior to the adoption of such rule) until such rule is adopted, and after such adoption will comply with such rule in the form in which it is in effect from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2196 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

[2] Kemper Blue Chip Fund, Investment Company Act Release Nos. 18801 (June 19, 1992) (notice) and 18849 (July 19, 1992) (order). The order sought by this application will, if issued, supersede the Prior Order.

[Rel. No. IC–20033; File No. 812–8086]

The Prudential Insurance Company of America et al.

January 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Prudential Insurance Company of America ("Prudential"), Pruco Life Insurance Company ("PrucoLife"), Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey"), and The Prudential Variable Appreciable Account, The Proco Life Variable Appreciable Account, The Pruco Life Variable Universal Account, The Pruco Life PRUvider Variable Appreciable Account, and The Pruco Life of New Jersey Variable Appreciable Account (collectively, the "Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) and from Rule 6e–3(T) under the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to impose a premium based charge under certain flexible premium variable life insurance policies in an amount that is reasonably related to Prudential's increased federal income tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATES: The application was filed on September 11, 1992 and amended on September 10, 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 Secretary of the SEC 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 22, 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 5th Street, NW., Washington, DC 20549. Applicants: The Prudential Insurance Company of America, Prudential Plaza, Newark, NJ 07102, Attn: John P. Gualtieri, Jr.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch.

Applicants' Representations

1. Prudential is a mutual life insurance company organized under the laws of New Jersey. Pruco Life, a direct, wholly-owned subsidiary of Prudential, is a stock life insurance company organized under the laws of Arizona. Pruco Life of New Jersey, an indirect, wholly-owned subsidiary of Prudential, is a stock life insurance company organized under the laws of New Jersey.

2. The Prudential Variable Appreciable Account is a separate account established by Prudential. The Pruco Life Variable Appreciable Account, Pruco Life PRUvider Variable Appreciable Account and Pruco Life Variable Universal Account are separate accounts established by Pruco Life. The Pruco Life of New Jersey Variable Appreciable Account is a separate account established by Pruco Life of New Jersey. All of the Accounts meet the 1940 Act definition of separate account. The Accounts issue variable life insurance contracts to the public and may, in the future, issue other variable lie insurance contracts that rely, for exemption form certain provisions of the Act, upon Rule 6e–3(T). The three life insurance company Applicants may, in the future, establish additional separate accounts which will issue variable life insurance contracts that rely, for exemption from certain provisions of the Act, upon Rule 6e–3(T).

3. Applicants request exemptions from Section 27(c) of the 1940 Act and Rule 6e–3(T) thereunder to permit them to deduct from premium payments received under certain variable life insurance contracts an amount that is reasonable in relation to the increased income taxes payable by Prudential as the result of Section 848 of the Internal Revenue Code. The insurance company Applicants also request that other similar separate accounts that may be established by them in the future be permitted to rely on any order issued with respect to the subject application.

4. Applicants assert that Section 848 was added to the Internal Revenue Code by Congress in 1990 in order to increase federal revenues by increasing federal income taxes paid by life insurance companies, as explained in the section's legislative history. Although the committee reports suggest that the basis for Section 848 was that the expenses incurred when a life insurance policy is sold should properly be capitalized rather than treated as expenses deductible from gross income in the year in which incurred, all actual expenses incurred in connection with such sales continue to be deductible in the year in which incurred. Rather than capitalizing actual policy acquisition expenses, Section 848 reduces the "general" (aggregate) deductions of a life insurance company by a specified arbitrary percentage of the net premiums received during the taxable year. This amount is then capitalized and allowed as a deduction ratably over a 10-year period. In the case of individual life insurance contracts, whether fixed or variable, the specified percentage of net premiums is 7.7%.

5. Applicants submit that since the corporate tax rate allocable to Prudential's income is 34%, the immediate effect of Section 848 is an increase in tax equal to 2.487% of the aggregate amount of premiums received on individual life insurance contracts during the taxable year. However, this increase will be offset by decreases in the Company's federal income tax in each of the subsequent 10 years. Although the aggregate amount of these decreases is equal to the tax increase in the year in which the premiums are received, the value of the annual decreases is less because they take place in the future. Applicants assert that the burden resulting from Section 848 is therefore, determined by reducing the amount of the immediate increase in federal income taxes by the sum of the present value of the decreases in the tax in each of the next 10 years. In order to determine that present value, it is necessary to use an appropriate discount rate.

6. Applicants submit that 10% is an appropriate discount rate to be used in determining the net tax burden resulting from Section 848. Applicants assert that for a stock life insurance company the appropriate discount rate would be equal to the cost of raising capital, which is generally referred to as the "cost of capital." Since Prudential is a mutual life insurance company, without stockholders, it has not sought to raise capital in the public equity markets, or by issuing long-term public debt securities. Applicants suggest, therefore, an analogous concept to "cost of capital" that should be used for a mutual life insurance company. Prudential, like other mutual life insurance companies, seeks to maintain a surplus, the primary objective of

which is to insure that its contractual obligations to all policy and contract owners will be met. Nevertheless, Prudential and state insurance departments regard it as appropriate for part of that surplus to be used to create new products, such as new forms of variable life insurance. For this process to continue, the development expenses incurred must be recovered from the persons who buy those products; thus products are priced so that they are expected to produce enough revenues to pay all anticipated benefits and expenses and a reasonable addition to surplus. In determining what a reasonable addition to surplus should be, Prudential takes into account a number of factors including market interest rates, its anticipated long-term growth rate, inflation, information about the rates of return obtained by other mutual life insurance companies, and the risks associated with a particular product. The greater the risk of a particular product, the higher after-tax return that Prudential seeks to earn upon the portion of its surplus that it has "invested" in the development of the product. Applicants represent that these factors are appropriate ones to consider in determining what may be thought of as its equivalent of cost of capital.

7. Prudential also seeks to maintain a ratio of surplus to assets that will ensure stability of the company and the maintenance of its competitive position. It seeks generally to have its surplus grow at least at the same rate as its assets. Taking all these factors into account, and with particular emphasis upon the risks involved in the variable life insurance contracts that it and its subsidiaries issue, Prudential has determined that an appropriate after-tax rate of return on these contracts is 10% and, accordingly, that the appropriate discount rate to use in determining the net burden imposed by Section 848 is also 10%.

8. If the decrease in tax in each of the 10 years following the receipt of a particular premium is discounted at 10%, the immediate increase in taxes of 2.487% would be reduced by the present value of the subsequent decreases in taxes, which aggregate 1.588% of the premium. The remainder, or 0.929% of the premiums received, is the before-tax burden imposed by Section 848. This is the equivalent of an after-tax increase of 1.4%.

Applicants represent that Prudential is willing to absorb a portion of this burden and has determined to make a charge of 1.25% of the premiums received in each year. Since this charge is made only to recover the tax burden resulting from Section 848, Applicants assert that the charge is equivalent to a premium tax. Prudential represents that the 1.25% deduction from premiums is reasonably related to its increased tax burden under Section 848 of the Code, taking into account the benefit to Prudential of the amortization permitted by Section 848, and the use of a 10% discount rate in computing the future deductions resulting from such amortization.

9. Prudential believes that a charge of 1.25% of premium payments would reimburse it for most of the impact of Section 848 (as currently written) on its federal tax liabilities. Prudential submits, however, that it would have to increase this charge if future changes in, or interpretations, of, Section 848 or any successor provision result in a further increased tax burden due to the receipt of premiums. Such an increase could result from a change in the corporate tax rate, a change in the 7.7% of premiums set forth in Section 848, or a change in the amortization period required by that section. Such an increase could also result if it became necessary or appropriate to increase the discount rate. Changes in any of these factors could also make a decrease in the charge appropriate. Prudential will reserve the right to increase or decrease the 1.25% charge in response to future changes in, or interpretations of, Section 848 or in any successor provision, or changes in the cost of capital generally, that result in an increase or decrease in its tax burden.

Applicants' Legal Analysis

1. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load. Section 2(a)(35) of the 1940 Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants contend that their proposed tax burden charge is not properly chargeable to sales or promotional activities, and therefore does not constitute sales load under Section 2(a)(35).

2. Sub-paragraph (b)(13)(iii)(E) of Rule 6e–3(T) provides an exemption from Section 27(c)(2) to permit an insurer to make a deduction other than for sales load, including charges to cover premium or other taxes imposed by any state or other governmental entity. Applicants request an exemption from Section 27(c)(2) only to preclude the possibility that a charge related to the increased burden resulting from Section 848 is not covered by the exemption for premium taxes provided by Rule 6e–3(T)(b)(13)(iii)(E).

3. Paragraphs (b)(1) and (c)(4) of Rule 6e–3(T) together provide an exemption from the Section 2(a)(35) definition of sales load by substituting a new definition for use throughout the Rule. The alternative definition, found in paragraph (c)(4) of Rule 6e–3(T), defines sales load during a contract period as the excess of any payments made during that period over the sum of certain specified charges. Under paragraph (c)(4)(v), one of such charges is a deduction for, and approximately equal to, state premium taxes. The Section 848 charge relates to federal taxes, rather than state premium taxes, and therefore is not a deduction expressly permitted by Section (c)(4)(v) of Rule 6e–3(T). Applicants seek an exemption from Section (c)(4)(v) so that they may deduct the Section 848 charge in the manner that Rule 6e–3(T)(c)(4)(v) currently permits state premium taxes to be deducted.

4. Because the proposed tax burden charge does not fall squarely into any of the non-sales load charges or adjustments set out in paragraph (c)(4) of Rule 6e–3(T), it might be considered as part of the sales load charged on the variable life insurance contracts. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load or otherwise subject to the sales load limits of Rule 6e–3(T). Applicants also assert that nothing in the administrative history of the Rule (or, for that matter, in the administrative history of Rule 6e–2, its predecessor rule) suggests that the Commission intended to treat tax charges as sales load and that if Section 848 had been enacted prior to the adoption of Rule 6e–3(T), a charge of the kind described above would surely have been included among the charges described in paragraph (c)(4) of Rule 6e–3(T).

5. Section 6(c) of the 1940 Act, in relevant part, authorizes the Commission, by order upon application, to exempt any person, security or transaction or any class or classes of persons, securities or transactions from

any provision or provision of the 1940 Act or any rule or regulation thereunder, if and to the extent that the 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 1940 Act. Applicants request an order pursuant to Section 6(c) of the 1940 Act, exempting them and any future separate accounts that may be established by any of the three insurance company Applicants from the provisions of Section 27(c)(2) of the 1940 Act and paragraph (c)(4)(v) of Rule 6e–3(T) under the 1940 Act, to the extent necessary to permit them to deduct from premium payments made under flexible premium variable life insurance contracts, a charge in an amount that is reasonable in relation to Prudential's increased federal tax burden related to the receipt of such premium payments.

6. Applicants state that the exemption requested is necessary in order for them and any future separate accounts to rely on sub-paragraph (b)(13)(i) of Rule 6e–3(T), which provides critical exemptions from the sales load limitations of Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Applicants are exempted from those sales load limitations only if they adhere to the alternate sales load limitations set out in paragraph (b)(13)(i), and Applicants state that it is unfair and inappropriate to include the proposed tax burden charge as a part of the sales load when applying the provisions of Rule 6e–3(T)(b)(13)(i). Applicants state that the public policy that underlies sub-paragraph (b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. The treatment of a tax burden charge attributable to the receipt of premium payments as sales load would not in any way further this legislative purpose, because such a deduction has no relation to the payment of sales commissions or other distribution expenses.

Applicant's Conditions

Applications agree to comply with the following as conditions to the exemptions requested herein:

1. Prudential will monitor the reasonableness of the 1.25% charge.

2. The registration statement for any variable life insurance contract under which the 1.25% charge is deducted will include (a) disclosure of the charges, (b) disclosure explaining the purposes of the charge, and (c) a statement that the charge is reasonable in relation to Prudential's increased tax burden as a result of Section 848 of the Code.

3. Prudential will also include as an exhibit to the registration statement for any variable life insurance contract under which the 1.25% charge is deducted an actuarial opinion as to (a) the reasonableness of the charge in relation to Prudential's increased tax burden as a result of Section 848 of the Code, (b) the reasonableness of the after tax rate of return used in calculating the charge, and (c) the appropriateness of the factors taken into account by Prudential in determining the after tax rate of return.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the requested exemptions from Sections 27(c)(2) of the 1940 Act and paragraph (c)(4)(v) of Rule 6e–3(T) under the 1940 Act to permit them to deduct 1.25% of premium payments meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in this application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2122 Filed 1–31–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Amendment of Privacy Act; System of Records

AGENCY: Small Business Administration.

ACTION: Notice of amendment to agency's system of records pursuant to the provisions of the Privacy Act and to open comment period.

SUMMARY: This notice amends the Small Business Administration's (SBA) System of Record 050, EEO Complaint Cases, to add a section explaining the exemptions to the Privacy Act which are applicable to that system of record. Further, this notice provides for review and comment on the addition of the Civil Rights Compliance Files to the Agency's Privacy Act System of Records. Finally, this notice adds the addresses of the Civil Rights Central Office Duty Stations to Appendix A. These additions are in compliance with the Federal Information Resources Management Review Program.

DATES: Written comments on these additions to the System of Records must be received on or before March 3, 1994. This notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Written comments on the System of Records should be directed to Beverly K. Linden, Chief, Freedom of Information/Privacy Acts Office, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Beverly K. Linden, Chief, Freedom of Information/Privacy Acts Office, (202) 653–6460.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act stipulation that agencies publish their systems in the **Federal Register** when there is a revision, change or addition.

For the reasons set forth above, the Small Business Administration (SBA) is amending its System of Records as follows:

SBA 050 [Amended]

1. The following information is to be added to the end of System of Record 050, EEO Complaint Cases:

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from the application of all provisions of section 552a except sections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), (11), and (i) to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552a (k)(2) and (k)(5), except as otherwise provided therein, all investigatory material

compiled for law enforcement purposes for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information contained in this system of records is exempt from sections 3(c)(3), (d), (e)(1), (e)(4) (G) through (I) and (f) of the Privacy Act. 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) through (I) and (f). This exemption is necessary in order to protect the confidentiality of sources of information and to maintain access to sources necessary in making determinations of suitability for employment.

2. The following information is to be added to the end of the System of Records:

SBA 165

SYSTEM NAME:

Civil Rights Compliance Files—SBA 165.

SYSTEM LOCATION:

Central Office and Civil Rights Compliance Central Office Duty Stations. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients, conduits and subrecipients of SBA's financial assistance. Members of the public who have filed allegations of discrimination against recipient businesses, conduits, 8(a) contractors or Agency offices/personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes on-site reviews, correspondence, supporting documents, interview statements, program files, information developed in investigating an allegation of discrimination and other information related to the processing of a complaint of discrimination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Civil Rights Compliance SOP 90 30 2; and 13 CFR parts 112, 113, and 117.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For internal use only. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Disclosure may be made to the Department of Justice when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Disclosure may be made in a proceeding before a court or adjudicative body before which the Agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the Agency is his or her official capacity; or

(c) Any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or

(d) The United States, where the Agency determined that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in either computer data logs, file folders, or binders which are located in file cabinets or on the desk of the responsible employee.

RETRIEVABILITY:

Records are indexed by the Complainant's name, address, city, state, zip code and four digit fiscal year/order in which received during that fiscal year (four digit number is keyed to Complaint Log for that fiscal year).

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

There is no official Agency policy on retention of these records. Most records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Chief, Deputy Chief and Area Civil Rights Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records. (Regardless of actual location, all records are considered to be Central Office records.)

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Recipient Business reviewed by Civil Rights personnel and Complainants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (i) to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), except as otherwise provided therein, all investigatory material compiled for law enforcement purposes for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information contained in this system of records is exempt from sections 3(c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) of the Privacy Act. 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f). This exemption is necessary in order to protect the confidentiality of sources of information and to maintain access to sources necessary in making determinations of suitability for employment.

Appendix A [Amended]

3. Add the following to the end of Appendix A:

SBA Civil Rights Compliance Central Office Duty Stations

Region 2 Central Office Duty Station, 26 Federal Plaza, Room 1437A, New York, New York 10278

Regions 1 and 3 Central Office Duty Station, 475 Allendale Road, Suite 201, King of Prussia, Pennsylvania 19406

Region 4 Central Office Duty Station, One Baltimore Place, NE, Suite 100, Atlanta, Georgia 30308

Regions 5 and 7 Central Office Duty Station, 300 South Riverside Plaza, Suite 1975S, Chicago, Illinois 60606–6611

Regions 6 and 8 Central Office Duty Station, 1114 Commerce Street, Room 822, Dallas, Texas 75242

Regions 9 and 10 Central Office Duty Station, 211 Main Street, 4th Floor, San Francisco, California 94105.

Dated: December 6, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–2237 Filed 1–31–94; 8:45 am]

BILLING CODE 8025–01–M

Legacy Fund Limited Partnership

[License No. 03/03–0193]

Approval of a Change of Ownership in a Small Business Investment Company

On August 12, 1993 a notice was published in the **Federal Register** (Vol. 58, No. 154 FR p. 42998) stating that an application for a change of ownership has been filed by Legacy Fund Limited Partnership with the Small Business Administration (SBA) pursuant to § 107.601 of the Regulations governing Small Business Investment Companies (13 CFR 107.601 (1993)).

Interested parties were given until close of business Monday, September 13, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA approved the change of ownership on December 30, 1993.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–2236 Filed 1–31–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1936]

Availability of Groundrules for U.S. Initiative on Joint Implementation

ACTION: Extension of comment period.

SUMMARY: The Department of State notice published in 58 FR 66057, December 17, 1993 (Department of State Public Notice 1918), set forth the Groundrules for the U.S. Initiative on Joint Implementation as directed by the President in the U.S. Climate Change Action Plan. These groundrules set forth criteria for the operation of a pilot program, specifically designed to establish an empirical basis for considering domestic and international approaches to joint implementation. The notice published here amends the previous notice, published in 58 FR 66057, to extend the comment period to February 25, 1994.

PUBLIC COMMENT: Written comments on the groundrules for the U.S. Initiative on Joint Implementation are invited. Comments should be submitted to the Department of State no later than February 25, 1994. Comments or questions should be directed to: Mr. Daniel A. Reifsnyder, Director, Office of Global Change, room 4329–A, Department of State, 2201 C Street NW., Washington, DC 20520–7818, telephone: (202) 647–4069.

Dated: January 13, 1994.

Rafe Pomerance,

Deputy Assistant Secretary for Environment and Development, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 94–2244 Filed 1–31–94; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 1940]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet February 17 and 18, 1994 at 9 a.m. in the Department of State.

The Committee will meet in open session from 9 a.m. on the morning of Thursday, February 17, 1994, until noon of that day, in room 1207, Main State. The remainder of the Committee's sessions, until the end of this session on Friday, February 18, at 4 p.m., including several subcommittee meetings on February 16, will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b (c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123.

Dated: January 21, 1994.

William Z. Slany,

Executive Secretary.

[FR Doc. 94–2226 Filed 1–31–94; 8:45 am]

BILLING CODE 4710–11–M

[Public Notice 1938]

Overseas Security Advisory Council; Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday and Wednesday, February 8–9, 1994, at 8:30 a.m. at the Ritz-Carlton Buckhead in Atlanta, Georgia. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Patricia Richards, Overseas Security Advisory

Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: January 14, 1994.

Mark Mulvey,

Director of the Diplomatic Security Service.

[FR Doc. 94–2245 Filed 1–31–94; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 1937]

Delegation of Authority No. 210

1. General Delegation

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby delegate all authorities vested in the Secretary of State by section 212(a)(3)(C)(i) and section 241(a)(4)(C)(i) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(a)(3)(C)(i) and 1251(a)(4)(C)(i)), as amended by sections 601(a) and 602(a) of the Immigration Act of 1990, Pub.L. 101–649 (Nov. 29, 1990), to the Under Secretary of State for Political Affairs.

2. Technical Provisions

(a) The authorities delegated herein may not be redelegated.

(b) Notwithstanding this delegation of authority, the Secretary of State and the Deputy Secretary of State may exercise any function delegated by this delegation.

(c) Notwithstanding Delegation of Authority No. 74 (November 27, 1953), as amended, the authorities delegated herein shall be exercised only by the Secretary of State, the Deputy Secretary of State, or the Under Secretary of State for Political Affairs.

(d) Any act, regulation, delegation, or procedure affected by this delegation shall be deemed to be such act, regulations, delegation, or procedure as amended from time to time.

Dated: January 5, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–2227 Filed 1–31–94; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 21, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49378
Date filed: January 21, 1994
Parties: Members of the International Air Transport Association
Subject:
TC31 Reso/P 1014 dated November 23, 1993
South Pacific Resos r–1 to r–24
Proposed Effective Date: March 1, 1994

Docket Number: 49379
Date filed: January 21, 1994
Parties: Members of the International Air Transport Association
Subject:
TC Reso/P 1509 dated November 9, 1993
Within Africa Resolutions r–1 to r–25
Proposed Effective Date: April 1, 1994

Docket Number: 49380
Date filed: January 21, 1994
Parties: Members of the International Air Transport Association
Subject:
TC2 Telex Mail Vote 666
Youth Fares Within Middle East (Reso 092h)
Proposed Effective Date: February 15, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–2212 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended January 14, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49357
Date filed: January 11, 1994
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 663
Amend Rounding Units for Russian Federation r-1—024d r-2—033d
Proposed Effective Date: January 15, 1994

Docket Number: 49358
Date filed: January 11, 1994
Parties: Members of the International Air Transport Association
Subject:
TC31 Reso/P 1018 dated January 4, 1994
North & Central Pacific Excess Baggage Charges
Resos 311p (r-1) & 311w (r-2)
Proposed Effective Date: May 1, 1994

Docket Number: 49368
Date filed: January 13, 1994
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1519 dated November 23, 1993
TC2 Fares 1301 dated December 23, 1993
Europe-Central Africa Resos r-1 to r-21
TC2 Reso/P 1520 dated November 23, 1993
TC2 Fares 1304 dated December 23, 1993
Europe-Indian Ocean Islands r-22 to r-44
TC2 Reso/P 1521 dated November 23, 1993
TC2 Fares 1302 dated December 23, 1993
Europe-Libya Resos r-45 to r-52
TC2 Reso/P 1522 dated November 23, 1993
TC2 Fares 1303 dated December 23, 1993
CORRECTION—
TC2 FARES 1306 Dated January 7, 1993
Europe-Eastern Africa r-53 to r-77
TC2 Reso/P 1523 dated November 23, 1993
TC2 Fares 1300 dated December 23, 1993
Europe-Southern Africa r-78 to r-95
TC2 Reso/P 1524 dated November 23, 1993
TC2 Fares 1305 dated December 23, 1993
Europe-Western Africa r-96 to r-110
TC2 Reso/P 1525 dated November 23, 1993
Europe-Africa Areawide r-111 to r-117
Minutes—TC2 Meet/P 0333 dated January 11, 1994
Proposed Effective Date: April 1, 1994

Docket Number: 49369
Date filed: January 13, 1994
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 664
Special Charges Reso 211—Lebanon (except US/UST)
Proposed Effective Date: February 1, 1994

Docket Number: 49370
Date filed: January 13, 1994
Parties: Members of the International Air Transport Association
Subject:
TC12 Reso/P 1548 dated December 17, 1994
N.Atlantic-Mideast (except Israel) r-1 or-16
Proposed Effective Date: April 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–2106 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 14, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49355
Date filed: January 10, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1994
Description: Application of Continental Airlines, Inc., pursuant to section 401 of the act and subpart Q of the Regulations, for renewal of its Route 561 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Newark, New Jersey, and Cancun, Mexico and between San Diego, California, and Mexico City/Toluca, Mexico and to integrate its Route 561 authority with Continental authority at other points.

Docket Number: 49359
Date filed: January 11, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 8, 1994
Description: Application of Virgin Atlantic Airways Limited pursuant to section 402 of the Act and subpart Q of the Regulations, requests an amendment of its foreign air carrier permit to perform regular scheduled combination air transportation of passengers, cargo and mail between London (Heathrow) and San Francisco, California.

Docket Number: 49364
Date filed: January 12, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 9, 1994
Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of segment 1 of its certificate for Route 560, authorizing scheduled foreign air transportation of persons, property, and mail between the terminal point Raleigh/Durham, North Carolina, and the terminal point Cancun, Mexico.

Docket Number: 49366
Date filed: January 12, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 9, 1994
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 564, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between (1) Memphis, Tennessee and Cancun, Mexico, and (2) Tampa, Florida and Cancun, Mexico.

Docket Number: 49371
Date filed: January 12, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 11, 1994.
Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity or amendment of its current certificate, to conduct foreign transportation to operate scheduled passenger, property and mail air service between Miami, Florida and Montego Bay, Jamaica.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–2105 Filed 1–31–94; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 94–001]

Chemical Transportation Advisory Committee Subcommittee on Marine Occupational Safety and Health; Meeting

AGENCY: Coast Guard, DOT.
ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee will meet to determine the need to lower the threshold for regulating the human exposure to Benzene-containing mixtures. The Subcommittee will also review the need for additional comprehensive exposure standards for marine workers. The meeting will be open to the public.

DATES: The meeting will be held March 3 and 4, 1994, from 9 a.m. to 5 p.m. daily. Written material should be submitted no later than February 18, 1994.

ADDRESSES: The meeting will be held at ARCO Marine, 300 Oceangate, Long Beach, CA 90802–4613. Written material should be submitted to Mr. Guy R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, telephone (617) 984–7435, or Dr. A. L. Schneider, U.S. Coast Guard Headquarters (G–MTH–1), 2100 2nd Street, SW, Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 Section 1 *et seq.* The agenda will include the discussion of the following topics:

(1) The need to lower the threshold for regulating the human exposure to Benzene-containing mixtures; and

(2) The need for additional comprehensive exposure standards for marine workers.

This meeting will continue the Subcommittee's work in both areas. Attendance is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify Mr. Colonna, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 30 copies to Mr. Colonna no later than February 18, 1994.

Dated: January 14, 1994.
A. C. North,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.
[FR Doc. 94–2217 Filed 1–31–94; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

Intent to Rule on Application to Impose and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bert Mooney Airport, Butte, MT

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use and impose only the revenue from a PFC at Bert Mooney Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 3, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager, Helena Airports District Office, HLN–ADO, Federal Aviation Administration, FAA Building, suite 2, 2725 Skyway Drive, Helena, MT 59601

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick Griffith, Airport Manager at the following address: Bert Mooney Airport, 101 Airport Road, Butte, MT 59701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Bert Mooney Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, suite 2, 2725 Skyway Drive, Helena, MT 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use and impose only the revenue from a PFC at Bert Mooney Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 21, 1994, the FAA determined that the application to impose and use and impose only the revenue from a PFC submitted by the Bert Mooney Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1994.

Proposed charge expiration date: April 30, 2000.

Total estimated PFC revenue: $410,202.00.

Brief description of proposed project(s): Impose and Use projects: Airport layout plan update, runway 11/29 rehabilitation, taxiway C extension, taxiway D widening, taxiway E and B rehabilitation, terminal renovation, modify loading bridge, rehabilitate taxiway A lighting. Impose only projects: Purchase new Aircraft Rescue and Firefighting (ARFF) vehicle, expand ARFF garage and update airport maintenance building, air carrier apron reconstruction, runway 15/33 rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand, non-scheduled Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bert Mooney Airport.

Issued in Renton, Washington on January 21, 1994.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 94–2211 Filed 1–31–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0013.

Form Number: PD F 1048 and PD F 2243.

Type of Review: Extension.

Title: Application for Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities (1048); Supplemental Statement Concerning United States Securities (2243).

Description: The application is used by owners of securities to request substitute securities or payment in lieu of lost, stolen or destroyed securities. Supplemental statements are used by owners or others having knowledge concerning the securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Response: 25 minutes.

Frequency of Response: On occasion, Other (Supplemental Form PD F 2243 only as needed).

Estimated Total Reporting Burden: 32,000 hours.

OMB Number: 1535–0035.

Form Number: PD F 4881.

Type of Review: Extension.

Title: Application For Payment of United States Savings Bonds/Notes and/or Related Checks In An Amount Not Exceeding $1,000 by the Survivor of a Deceased Owner Whose Estate is Not Being Administered.

Description: The form is used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,965.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 991 hours.

OMB Number: 1535–0036.

Form Number: PD F 2513.

Type of Review: Extension.

Title: Application for Voluntary Guardian of Incompetent Owner of United States Savings Bonds/Notes.

Description: This form is used by voluntary guardians of incompetents owner(s) to establish their right to act on behalf of the incompetent in requesting payment of the bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,650.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,600 hours.

OMB Number: 1535–0064.
Form Number: PD F 1980 and PD F 2490.
Type of Review: Extension.
Title: Description of United States Savings Bonds Series HH/H (1980); Description of United States Savings Bonds/Notes (2490).
Description: These forms are used by an owner of United States Savings Bonds/Notes to describe their holding when they apply to the Bureau of the Public Debt for some type of relief or service.
Respondents: Individuals or households.
Estimated Number of Respondents: 19,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,900 hours.
Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–2175 Filed 1–31–94; 8:45 am]
BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review.

January 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0131.
Form Numbers: ATF F 5400.14/5400.15, Part III.
Type of Review: Extension.
Title: Renewal of Explosives License or Permit.
Description: This information collection activity is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 22 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.
OMB Number: 1512–0490.
Form Numbers: ATF F 4473 LV Parts I and II (5300.24 and 5300.25).
Type of Review: Extension.
Title: Licensed Firearms Dealer's Records of Acquisition, Dispositions and Supporting Data.
Description: This form is used by low volume firearms dealers to record acquisition and disposition of firearms and to determine the eligibility of transferees to receive firearms. It becomes part of a licensee's permanent record and may be used to trace firearms.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 92,750.
Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 71,588 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–2176 Filed 1–31–94; 8:45 am]
BILLING CODE 4810–31–P

Customs Service

[T.D. 94–10]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: Notice is hereby given that on December 23, 1993, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.45(a) of the Customs Regulations, as amended (19 CFR 111.45(a)), ordered the revocation of the license (No. 6911) issued to Bernard Flores in the San Juan Customs District to conduct Customs business.

Dated: January 24, 1994.

Janet L. Labuda,
Director, Office of Trade Operations.
[FR Doc. 94–2102 Filed 1–31–94; 8:45 am]
BILLING CODE 4820–02–M

United States Information Agency

Advisory Panel on Radio Marti and TV Marti

ACTION: Notice for the Federal Register.

The Advisory Panel on Radio Marti and TV Marti will conduct a meeting on February 7, 1994, from 10 a.m. to 5 p.m., in Gallery B at The Lowe Art Museum, 1301 Stanford Drive, Coral Gables, Florida, and on February 8, 1994, from 10 a.m. to 5 p.m., in the third floor conference room at The North-South Center, 1500 Monza Avenue, Coral Gables, Florida.

The Advisory Panel was established pursuant to Public Law 103–121 to determine the effectiveness and feasibility of Radio Marti and TV Marti broadcasting. The Panel will meet in open session with current and former U.S. government broadcasters, technical and scholarly experts, representatives of Cuban-American organizations, and other interested parties to discuss the purposes, policies and practices of U.S. broadcasting to Cuba.

In accordance with established Panel guidelines for public participation, the Panel will only be hearing testimony from invited parties; however, any written statements from members of the public are welcomed and will be considered by the Panel. Anyone interested in attending these meetings should call Diane Augustine at (202) 475–2204 for further information.

Dated: January 26, 1994.

Robert S. Leiken,
Executive Director, Advisory Panel on Radio Marti and TV Marti.
[FR Doc. 94–2243 Filed 1–31–94; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Persian Gulf Expert Scientific Committee; Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Persian Gulf Expert Scientific Committee will be held on:

Tuesday, February 22, 1994, at 9 a.m.–5 p.m.
Wednesday, February 23, 1994, at 9 a.m.–12:01 p.m.

The location of the meeting will be 811 Vermont Avenue, NW.; Washington, DC; room 819, the Kenneth E. Eaton Board Room.

The Committee's objectives are to advise the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4 p.m. until 5 p.m. on February 22, 1994, and 11 a.m. until 12:01 p.m. on February 23, 1994. During these executive sessions discussions and recommendations will deal with medical records of specific patients and individually identifiable patient medical histories. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Closure of these portions of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c)(6).

Additional information concerning these meetings may be obtained from the Chairperson, Office of Environmental Medicine and Public Health, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 24, 1994.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–2112 Filed 1–31–94; 8:45 am]

BILLING CODE 8320–01–M

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523–3830.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent 5–93

Question Presented

In determining the surviving spouse's income for improved-pension purposes, may amounts expended by the survivor in prepayment of obligations jointly incurred by the survivor and the veteran be excluded under the "just-debts" exclusion in 38 U.S.C. 1503(a)(3)?

Held

In determining a surviving spouse's income for improved-pension purposes, amounts expended by the survivor in prepayment of secured obligations jointly incurred by the survivor and the veteran for the purchase of real or personal property may not be excluded under 38 U.S.C. 1503(a)(3)(A), which provides that amounts paid by a surviving spouse or child of a deceased veteran for the veteran's "just-debts" may be excluded from income.

Effective date: August 5, 1993.

O.G.C. Precedent 6–93

Question Presented

(a) Under what circumstances, if any, may information contained in an eligibility verification report filed after a beneficiary's death be considered in determining eligibility for accrued benefits under 38 U.S.C. 5121(a)?

(b) May an award of accrued benefits under 38 U.S.C. 5121(a) be based on logical inferences from information of record at the date of the beneficiary's death?

Held

(a) Information contained in an eligibility verification report submitted after the beneficiary's death may not be considered "evidence in the file at date of death" for purposes of an award of accrued pension benefits under 38 U.S.C. 5121(a).

(b) An award of accrued benefits under 38 U.S.C. 5121(a) may be based on logical inferences from information in the file at the date of the beneficiary's death.

Effective date: August 9, 1993.

O.G.C. Precedent 7–93

Question Presented

Does "service in Vietnam," as referred to in 38 CFR 3.313, include service of a Vietnam era veteran who flew military missions in Vietnamese airspace, but who never actually landed in Vietnam?

Held

For purposes of 38 CFR 3.313, which authorizes service connection of non-Hodgkin's lymphoma developing after military service in a veteran with service in Vietnam during the Vietnam era, the term "service in Vietnam" does not include service of a Vietnam era veteran whose only contact with Vietnam was flying high-altitude missions in Vietnamese airspace.

Effective date: August 12, 1993.

O.G.C. Precedent 8–93

Question Presented

Do the provisions of 38 U.S.C. 1159 and 38 CFR 3.957 protect an award of dependency and indemnity compensation (DIC) under which benefits have been paid for over ten years but which was erroneously made in light of a rating-board decision that the veteran's death was not service connected?

Held

The provisions of 38 U.S.C. 1159 and 38 CFR 3.957 do not protect an award of dependency and indemnity compensation under which benefits have been paid for over ten years but which was erroneously made in light of a rating-board decision that the veteran's death was not service connected.

Effective date: August 25, 1993.

O.G.C. Precedent 9–93

Question Presented

May the term "definite," as used in 38 CFR 4.132, be construed in a quantitative manner?

Held

The word "definite," as used in 38 CFR 4.132 to describe a 30-percent degree of disability for purposes of rating claims based on certain mental disorders, should be construed to mean distinct, unambiguous, and moderately large in degree, more than moderate but less than rather large.

Effective date: November 9, 1993.

O.G.C. Precedent 10–93

Question Presented

What legal effect has the provision in 38 CFR 3.326(b) that evidence will not be required solely to establish permanent and total disability for improved-pension purposes for veterans 65 years of age or older?

Held

The provision of 38 CFR 3.326(b), that "[e]vidence solely to establish permanent and total disability will not be required in claims for pension under 38 U.S.C. 1521 if the veteran has attained the age of 65 years," is inconsistent with the will of Congress as expressed in section 8002 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508. That statute eliminated for improved-pension purposes in claims filed after October 31, 1990, the presumption of permanent and total disability for persons 65 years of age or older. The referenced provision of section 3.326(b) is therefore null and of no legal effect.

Effective date: November 24, 1993.

O.G.C. Precedent 11–93

Question Presented

(a) When a claimant has been discharged under honorable conditions as a conscientious objector, does 38 CFR 3.12(c)(1) bar eligibility for benefits where the evidence does not establish that the claimant refused to perform military duty, wear the uniform, or comply with lawful military orders?

(b) May a period of service be considered "active, continuous service" for purposes of 38 CFR 3.307(a)(1) where the period of service was interrupted by a thirteen-day period during which the servicemember was classified as being absent without official leave (AWOL)?

Held

(a) Under the provision of 38 U.S.C. 5303(a) and 38 CFR 3.12(c)(1), a claimant who is discharged under honorable conditions as a conscientious objector is not thereby barred from eligibility for veterans' benefits unless, in addition to being a conscientious objector, the claimant also refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities.

(b) In order to be eligible for service connection on a presumptive basis for certain chronic and tropical diseases, regulations at 38 CFR 3.307(a)(1) require that a veteran have had at least ninety days continuous, active service. Not all unauthorized absences result in a break in service for purposes of this requirement. An absence of thirteen days, after which the absentee voluntarily returned to the absentee's unit, although not creditable for pay or time-in-service purposes, did not constitute a break in service for purposes of the "active, continuous service" requirement imposed by regulations governing presumptive service connection.

Effective date: December 20, 1993.

O.G.C. Precedent 12–93

Question Presented

Pursuant to the opinion of the Court of Veterans Appeals (CVA) in *In the Matter of the Fee Agreement of William G. Smith in Case Number 91–488 et al.*, 4 Vet. App. 487 (1990) *appeal docketed*, No. 94–7017 (Fed. Cir. Nov. 9, 1993) [hereinafter *Matter of Smith*], is the Department of Veterans Affairs (VA) required to pay 20 percent of a claimant's past-due benefit award directly to an attorney in accordance with an attorney fee agreement when the claimant would not be entitled to payment of any portion of the past-due benefit award because his outstanding indebtedness to the United States exceeded the amount of the past-due benefits awards?

Held

The provisions of 38 U.S.C. 5314(a) require VA to apply the entire amount of the past-due benefits award to offset the veteran's outstanding debt to the United States. Therefore, no fund of past-due benefits payable to the veteran was created, and the veteran's attorney could not, by assignment under 38 U.S.C. 5604(d), obtain a right to direct VA payment of attorney fees from the past-due benefits award.

Effective date: December 21, 1993.

By direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 94–2113 Filed 1–31–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 21
Tuesday, February 1, 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).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Wednesday, February 9, 1994.

PLACE: Room 0204-South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The staff briefing will consist of matters relating to:

1. Interim Final Rule on new loan policies.
2. Loan processing procedures.
3. Status of outstanding U.S. Treasury Notes.
4. Privatization discussion with guest speaker.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 9 a.m., Thursday, February 10, 1994.

PLACE: Williamsburg Room—Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Approval of Minutes of November 4, 1993, Board meeting.
3. Report on loans approved in the first quarter of FY 1994.
4. Review of first quarter, FY 1994, financial statements.
5. Report of ad hoc committee on privatization of the RTB, if necessary.
6. Report of ad hoc committee on prepayments, if necessary.
7. Delegation of authority for the Assistant Secretary.
8. Establish date and location of future 1994 Board meetings.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: January 28, 1994.

Blaine D. Stockton, Jr.,

Acting Governor, Rural Telephone Bank.

[FR Doc. 94–2325 Filed 1–28–94; 1:16 pm]

BILLING CODE 3410–15–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, February 2, 1994, 10:30 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Bicycles

The staff will brief the Commission on the results of the Commission's bicycle project and will present options for future work to reduce bicycle related injuries.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 26, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–2299 Filed 1–28–94; 10:52 am]

BILLING CODE 6355–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, February 3, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 3, 1994, which is scheduled to commence at 10:00 a.m., in room 856, at 1919 M Street NW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—Title: Narrowband Personal Communications Services (GEN Docket No. 90–314 and ET Docket No. 92–100; RMs–7617, 7760, 7782, 7860, 7977, 7978, 7979, and 7870; pp–4, pp–36, pp–37, pp–79, and pp–80). Summary:* The Commission will consider adoption of a *Memorandum Opinion and Order* addressing issues raised on reconsideration of the First Report and Order.

2—Common Carrier Private Radio—Title: Implementation of sections 3(n) and 332 of the Communications Act. Regulatory Treatment of Mobile Services (GEN Docket No. 93–252). Summary: The Commission will consider adoption of a *Second Report and Order* revising our rules to implement sections 3(n) and 332 of the Communications Act as amended by section 6002(b) of the Omnibus Budget Reconciliation Act of 1993.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–2343 Filed 1–28–94; 1:16 pm]

BILLING CODE 6712–01–M

* The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m. Wednesday, February 2, 1994.

PLACE: 11th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mid-Continent Resources, Inc.*, Docket No. WEST 91–421, etc. (Issues include whether Mid-Continent's alleged violations of 30 CFR 75.400 were significant and substantial and the result of its unwarrantable failure, and whether specified individuals violated 30 U.S.C. 820(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 for toll free.

Dated: January 26, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–2365 Filed 1–28–94; 2:36 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 28, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–2342 Filed 1–28–94; 1:16 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 31, February 7, 14, and 21, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 31

Monday, January 31

10:00 a.m.
Briefing on Report and Plan for Implementation of PRA Working Group Report (Public Meeting)
(Contact: Joe Murphy, 301–492–3980)

1:30 p.m.
Briefing on NRC Actions Vis-a-Vis Allegers (Public Meeting)
(Contact: James Lieberman, 301–504–2741)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 7—Tentative

Tuesday, February 8

2:00 p.m.
Briefing by Agreement States on Their Activities (Public Meeting)
(Contact: Richard Bangart, 301–504–3340)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, February 10

9:30 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)

Week of February 14—Tentative

Monday, February 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 21—Tentative

Thursday, February 24

2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 25

10:00 a.m.
Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)
(Contact: Sally Merchant, 301–504–2637)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: January 28, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–2381 Filed 1–28–94; 3:56 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
February 1, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Section 8 Rental Voucher Set-Aside for Homeless Persons With Disabilities, Funding Availability (NOFA) for FY 1994; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3679; FR–3329–N–01]

Funding Availability (NOFA) for FY 1994 Section 8 Rental Voucher Set-Aside for Homeless Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 1994.

SUMMARY: This notice announces the availability of a set-aside of up to $147.7 million of budget authority for a competition at the HUD Regional Office level for Section 8 rental voucher funding for very low-income homeless persons with disabilities and their families. (See the definition of eligible persons in section I(D)(1) of this NOFA.) This set-aside of rental voucher funding is to provide rental assistance to the eligible homeless population as defined in this NOFA in a manner similar to the Department's Shelter Plus Care Program. This announcement invites interested public housing agencies and Indian housing authorities, hereafter collectively referred to as housing agencies (HAs), to submit applications for the FY 1994 rental voucher funding.

The NOFA provides instructions to HAs governing the submission of applications, and describes procedures for rating, ranking, and approving applications. Each selected HA will be awarded funding of a special allocation of rental vouchers from the set-aside. The rental assistance budget authority funding awarded to the HAs under both the competitive and "Comprehensive Homeless Initiative Cities" components of this initiative must at least be matched on a one-for-one basis with supportive services resources from other Federal, State, local or private entities.

Eligible persons selected to participate in this set-aside will qualify for a Federal Preference because they are homeless. The priorities for selection of very low-income persons to participate in this set-aside are as follows: (1) Homeless persons with disabilities and their families who reside in transitional housing facilities for homeless persons based on their position on the HA's waiting list, or their subsequent addition to the HA's waiting list, (2) other eligible persons who are residing on the street or in emergency shelters based on their position on the HA's waiting list, or their subsequent addition to the HA's waiting list. Outreach procedures should be used, as needed, to assist in identifying eligible persons who may qualify under these priorities, to help these families apply to the HA for assistance and to place the eligible applicants on the HA's waiting list.

This initiative will add balance to current efforts that address homelessness by assisting communities in creating a local continuum of care. The rental assistance for permanent housing and supportive services provided through the use of these rental vouchers will be given on a priority basis to eligible persons residing in transitional housing facilities for homeless persons and who need rental assistance to move to permanent housing.

DATES: Applications from the HAs for competitive funding must be received by 3 p.m. local time in the Office of the Public Housing Division Director of the local HUD Field Office serving the area of the applicant on May 2, 1994. Applications from Indian housing authorities (IHAs) must be received by the same date and time in the Office of the Indian Programs Office Director serving the area of the applicant.

The above-stated application deadline for submission of completed applications to HUD is firm as to date and hour.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, room 4220; telephone (202) 708–0477 or TDD (202) 708–4594; or Mark Johnston, Deputy Director, Office of Special Needs Assistance Programs; room 7262; telephone (202) 708–4300 or TDD (202) 708–2565; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2577–0169. OMB has approved the supportive services collection requirements under the assigned control number 2577–0118.

I. Purpose and Substantive Description

(A) Purpose

The set-aside of rental vouchers for homeless persons with disabilities is a national initiative of the Department which will help communities establish a continuum of care for homeless persons. This initiative is designed to help persons with disabilities move from transitional housing facilities for homeless persons into permanent housing. Under this initiative, an on-going supportive services component must be available to participants for the same five years as the participants receive rental voucher program assistance. The range of supportive services, including outreach to identify eligible persons and assistance in locating and securing suitable housing, is to be funded from sources other than this program, including other Federal, State, local or private sources, and will respond to the needs of the homeless population. The initiative combines rental assistance with the supportive services appropriate to the needs of a homeless persons with disabilities to assist them to lead healthy, productive lives in the community.

The initiative also seeks to expand more permanent housing options for these individuals by providing to them the freedom to choose their own housing.

(B) Allocation Amounts

(1) Budget Authority for Competitive Funding

The Department will make available up to $132,892,960 of the budget authority approved in the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991) (the Act) which will support an estimated 4,700 rental vouchers. The recent amendment of 791.403 of title 24 of the Code of Federal Regulations allows for a set-aside such as this initiative for homeless persons with disabilities. This interim rule further implements section 213 (d) of the Housing and Community Development Act of 1974, as most recently amended by the Department of Housing and Urban Development Reform Act of 1989, which was incorporated into 24 CFR part 791, subpart D, on March 7, 1991 (56 FR 9822). It enables the Department of Housing and Urban Development to allocate assistance which the Secretary determines is not feasible to allocate to field office allocation areas by formula and which is contained in an Operating Plan submitted to Congress. These funds are available for a HUD Regional Office competition based on the selection criteria in this NOFA.

Listed below is a chart which shows the fair share allocation of funding by HUD Regional Office:

Regional office	Dollars	Units (estimated)
Boston—I	$9,538,365	287
New York—II	30,762,730	961
Philadelphia—III	12,165,235	434
Atlanta—IV	13,491,760	587
Chicago—V	19,604,880	769
Ft. Worth—VI	8,518,360	383
Kansas City—VII	2,975,265	133
Denver—VIII	1,944,98	584
San Francisco—IX	30,040,040	830
Seattle—X	3,851,340	144
Totals	132,892,960	4,612

An annual contributions contract (ACC) for the Section 8 funds will be executed by the HA and HUD after HUD approval of the HA's Section 8 application.

(2) Budget Authority for "Comprehensive Homeless Initiative Cities"

The Department will allocate $14.7 million of the funding from this set-aside for funding for HAs and non-profits in jurisdictions designated for funding under the Comprehensive Homeless Initiative component of the Innovative Homeless Initiatives Demonstration Program, as authorized by the HUD Demonstration Act of 1993 (Pub. L. 103–120, approved October 27, 1993). The assistance is targeted to homeless programs that will utilize a new system called a "continuum of care" and is designed around a basic three-step model of assessment, transitional housing, and rehabilitative services, and, if necessary, placement into permanent housing. The Department intends to publish a separate Notice for this funding.

(3) Family Self-Sufficiency (FSS) Program

Section 23 of the U.S. Housing Act of 1937 was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that all PHAs receiving additional rental vouchers or certificates in FY 1993 and all future fiscal years must establish a family self-sufficiency (FSS) program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the Federal Register on September 30, 1991 (56 FR 49592). The regulations for the FSS program were published on May 27, 1993 (58 FR 30858 and 58 FR 30906). Any rental voucher or certificate funding reserved in FY 93 and all future fiscal years will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published in the Federal Register on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 and FY 94 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

(C) HA Eligibility

Eligible applicants for rental voucher program funding under this set-aside for homeless persons with disabilities are housing agencies. An HA is an entity defined under section 3(b)(6) of the U.S. Housing Act of 1937 (1937 Act), including Indian housing authorities as defined in section 3(b)(11) of the 1937 Act. Only HAs that are currently administering a Section 8 rental voucher, rental certificate or moderate rehabilitation program are eligible to apply for funding under this NOFA.

(D) Program Description

(1) Definitions

The following definitions are supplemental to those found at 24 CFR parts 812, 882, and 887:

Acquired immunodeficiency syndrome (AIDS) or related diseases is the disease of AIDS or any condition arising from the etiologic agent for AIDS.

Applicant is a Public Housing Agency or Indian Housing Authority (HA).

Eligible person is a very low-income homeless person with disabilities (including a person who is seriously mentally ill; has chronic problems with alcohol, drugs, or both; or has AIDS or related diseases) and the family of such a person. To be eligible for assistance, the family must be very low-income. The definition of a family for the Section 8 rental assistance programs is described at 24 CFR part 812, and is applicable to this set-aside. The Department expects that most families who apply for this set-aside will be single persons. This NOFA uses the term "person" frequently although the eligible population for this set-aside, as with the regular rental assistance programs, includes the family of any person or persons selected to participate in the set-aside.

Homeless person or homeless family includes any individual or family that:

(a) Lacks a fixed, regular, and adequate nighttime residence; and

(b) Has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "homeless" or "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Person with a disability is an adult individual or a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if such person has a physical, mental, or emotional impairment or has a chronic problem with alcohol, drugs, or both which (a) is expected to be of long-continued and indefinite duration; (b) substantially impedes the individual's ability to live independently; and

(c) is of such a nature that such ability could be improved by more suitable housing conditions.

A person will also be considered to have a disability if the individual has a developmental disability, which is a severe, chronic disability that (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age 22; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and (e) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

The term "person with a disability" is defined as a family under 24 CFR part 812 and may include, for example: (a) Two or more persons with disabilities living together, and (b) one or more persons with disabilities living with another person who is determined to be important to their care or well-being.

Seriously mentally ill is a person who has a severe and persistent mental or emotional impairment that seriously limits the person's ability to live independently.

Supportive services is assistance that (a) addresses the special needs of

eligible persons, including housing search assistance; and (b) provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training and placement, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care does not qualify as a supportive service.

Supportive service provider (or service provider) is a person or organization licensed or otherwise qualified to provide supportive services either for profit or not for profit.

Transitional housing means housing that will facilitate the movement of homeless individuals and families to permanent housing generally within 24 months. This includes, but is not limited to, the Department of Housing and Urban Development's Supportive Housing Program (and the predecessor Supportive Housing Demonstration Program), the Department of Veterans Affairs' Domiciliary Care for Homeless Veterans program, the residential care component of the Homeless Chronically Mentally Ill program, and the Compensated Work Therapy/ Therapeutic Residence program for homeless veterans, and the Department of Health and Human Services' Transitional Living Program for Homeless Youth and Transitional Housing Demonstration Program.

(2) General

The use of rental assistance under this set-aside is limited to homeless persons with disabilities as defined in this section of the NOFA. The rental voucher and rental certificate regulations are published at 24 CFR parts 887 and 882 (including the nondiscrimination and Equal Opportunity Requirements). Under the Section 8 program, the HA makes monthly housing assistance payments to an owner on behalf of an eligible family, including a single person family, participating in the program. The maximum housing assistance payment is the difference between the payment standard or gross rent for the appropriate size unit and 30 percent of the family's adjusted income. The HA may issue a rental certificate to a family selected to participate in this set-aside if the family requests a rental certificate and the HA has one available. Each HA may select for participation only the number of persons it is able to assist under the HA's share of the $147.7 million set-aside regardless of whether the participant requests a rental certificate in lieu of a rental voucher.

When rental assistance provided by HUD under this set-aside becomes available for reissue (i.e., the participant initially selected for the program drops out of the program or is unsuccessful in the search for a unit, or the participant is terminated from the program), the rental assistance may only be used for another eligible person or family for assistance under this set-aside until the Department releases the HA from that obligation or five years, whichever is earlier.

(3) HA Responsibilities

The role of the HA in administering the rental voucher program is outlined in 24 CFR part 887 and includes providing rental vouchers, conducting initial and periodic Housing Quality Standards inspections, contracting with landlords, undertaking annual and intermediate tenant income verifications, and making housing assistance payments. If a rental voucher holder requests a rental certificate in lieu of a rental voucher and a rental certificate is available, the HA must issue a rental certificate and follow the rules of the rental certificate program as outlined at 24 CFR part 882. (See paragraph I(D)(2) of this NOFA for more information on the total number of families the HA is to assist under this set-aside.) The HA is also responsible for selecting eligible persons who are residing in transitional housing facilities and others from the HA's Section 8 waiting list, from those identified through outreach efforts who are residing on the street, or in emergency shelters. Additionally, HAs must amend their Equal Opportunity Housing Plans to reflect the affirmative outreach procedures for persons with disabilities who are least likely to apply for the program. Eligible persons will be issued rental assistance and assisted in locating suitable private market rental units that meet the requirements of the rental assistance programs. The HA will also be responsible for certifying that it will ensure the provision of supportive services, including funding the services itself if the planned resources do not become available for any reason. As an alternative to an HA certification, the HA may provide a certification from a State, local government, Indian Tribe, or private entity that ensures the provision of supportive services.

(4) Supportive Service Match

Supportive services must be provided in an amount that at least matches the total amount of rental assistance budget authority requested from HUD. The appropriate level and type of supportive services must be provided to eligible persons over the five-year period of the rental voucher. It is essential that housing assistance and appropriate supportive services be provided in a coordinated manner to give participants the opportunity and support necessary for successful integration in local communities.

(5) Supportive Services

(a) Search Assistance. The provision of supportive services must include housing search assistance to assist selected persons to locate and secure suitable housing. Housing search assistance should include assisting the person to find and lease a housing unit suitable to the person's needs and desires. The HA also may use a portion of its administrative fees to provide some assistance to a person in finding a unit where, because of race, age, handicap, large family size, or other reasons, the person is unable to locate an approvable unit. Additionally, the HA will (i) counsel an eligible person regarding the civil rights protections under the Fair Housing Act, Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973; (ii) assist an eligible person in filing a housing discrimination complaint if the person alleges that illegal discrimination is preventing the family from leasing a unit; and (iii) inform an eligible person about its right to make possible modifications to leased premises at the person's expense.

(b) Other services. It is also anticipated that the eligible persons who receive assistance under this set-aside will need other special supportive services to address their unique needs in maintaining permanent housing. These include: (1) Move-in assistance, such as security deposits and utility deposits (except as otherwise provided by a rental voucher or certificate), furnishings, moving expenses, and other assistance that will help establish a homeless person in permanent housing; (2) housing counseling in such areas as budgeting, housecleaning, minor maintenance and repairs, security practices, and tenants rights and responsibilities; and (3) supportive services related to the nature of the individual's disability, including, but not limited to, health care, mental health treatment, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training and placement, day care, nutritional services, intensive care when required, assistance in gaining access to local, State, and Federal government bene[illegible]

other case management services and other services essential for achieving and maintaining independent living.

(c) Match Requirements. The application must provide a certification to ensure that supportive services will be provided and are at least equal in value to the amount of rental assistance budget authority to be provided by HUD over the five-year annual contributions contract (ACC) term. The supportive services may be newly created for this program or already in operation. The supportive services or funding for the services may be provided by other Federal, State, local, or private programs and must be documented in the manner provided by Attachment 7 of this NOFA.

The supportive services must be available to participants who receive rental assistance for the entire term of the rental assistance. The value of supportive services provided to a participant does not have to equal the amount of rental assistance provided for that same participant. The funding for all supportive services does not have to match equally the total amount of rental assistance funding on a year-to-year basis.

In calculating the amount of the matching supportive services as documented in Attachment 7 of the application, the applicant may count:

(i) The value of cash provided by the applicant or a third party, including States, local governments and Indian Tribes, or other persons or organizations to support program activities;

(ii) The value of non-cash resources (including the salaries of supportive service providers) provided by the applicant or a third party, including States, local governments and Indian Tribes, or other persons or organizations;

(iii) The value of time and services contributed by volunteers computed at the rate of $10.00 an hour, except for donated professional services which may be counted at the customary charge for the service provided (Professional services are services ordinarily performed by donors for payment, such as the services of health professionals equivalent to the services they provide in their occupations); and

(iv) The value of a donated building or any lease on a building used for the provision of supportive services, provided the value included in the match is no more than the prorated share used for the program.

II. Application Process

(A) Application Submission and Processing

(1) Deadline

Applications from HAs for the competitive funding under the Section 8 rental voucher set-aside for homeless persons with disabilities must be received in the Office of the Public Housing Division Director or the Director of the Office of Indian Programs Office, of the local HUD Field Office serving the area of the applicant on the due date by 3 p.m. local time on May 2, 1994.

HUD Field Office/Indian Programs Office is the official place of receipt for all applications. Application forms (HUD–52515) may be obtained from the appropriate HUD Field Office/Indian Programs Office. The above-stated application deadline is firm as to date and hour.

In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this policy into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Field Offices will not accept applications, or any part of applications, sent via facsimile (FAX) transmission.

(2) Application Processing

The Field Office/Indian Programs Office will initially screen all applications, using the "Checklist for Technical Requirements", Attachment 1 of this NOFA, as a guide to determine if an application is complete. The HUD Field Office/Indian Programs Office will rate the applications (except for Selection Criterion #2) and send the applications and rating sheets for all approvable applications to the Regional Office. The Regional Office must rate all applications for Selection Criterion #2 and review the ratings of all applications for all other selection criteria and is responsible for the consistency of the ratings among the Field Offices/Indian Program Offices within the region. The Regional Office will re-rate any or all the selection criteria for applications for which a Field Office/Indian Programs Office may have scored incorrectly based on information available to the Regional Office in the applications. The Regional Office must document the reasons for a change in a score for each selection criterion. The highest scoring HAs will receive funding for rental vouchers from the set-aside for the homeless persons with disabilities program.

(B) Unacceptable Applications

Applications that fall into any of the following categories will not be processed:

(1) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(2) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(3) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(4) HUD has deferred application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(5) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or Field Office/Indian Programs Office management review findings for one or more of its rental voucher, rental certificate, or moderate rehabilitation programs.

(6) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

(7) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(8) The HA does not administer a rental voucher, certificate, or moderate rehabilitation program.

(9) The HA is not in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable.

(10) The HA has not documented that it will provide funds for supportive

services, i.e., letters of intent to provide commitments, or firm commitments, dependent upon available resources from other agencies or from non-profits, that at least match the total amount of rental assistance budget authority requested from HUD.

(C) Application Selection Criteria and Ranking Factors

Applications will be rated based on the criteria listed below. Applicants must receive points under each of the five criteria to be eligible for an award.

(1) Selection Criterion 1: HA Administrative Capability (25 points)

(a) Description. Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), portability of rental vouchers and certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements is either excellent or good.

(b) Rating. 16–25 points. Field Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings (unless the Field Office/Office of Indian Programs or the Regional Office has appealed the Office of Inspector General recommendation); the HA is complying with the portability requirements under the rental voucher and certificate programs; not more than 15 percent of the units inspected by the Field Office during the last management review failed to meet housing quality standards (HQS) or the field office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless the Field Office/Office of Indian Programs documents that the report was reflective of HA performance;

1–15 points. Field Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as good and any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed (or the Field Office/Office of Indian Programs or Regional Office has appealed the Office of Inspector General recommendation); the HA is complying with the portability requirements under the rental voucher and certificate programs; not more than 25 percent of the units inspected by the Field Office during the last management review failed to meet HQS or the field office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under ACC for one year or more was at least 85 percent as of September 30, 1992, unless the Field Office/Office of Indian Programs documents that the report is not reflective of HA performance;

0 points. If neither of the above statements apply, assign 0 points.

(2) Selection Criterion 2: Need (25 points)

(a) Description. The need for a rental assistance program targeted to homeless persons with disabilities as evidenced by data which show the unmet need and the application demonstrates an understanding of the specific homeless population(s) to be served. Information from the Street component of the 1990 U.S. Census may not be used to document the need for this set-aside within the HA's jurisdiction.

(b) Rating. 16–25 points. The application includes an estimate of the size of the homeless population within the HA's jurisdiction based on credible surveys, reports or other data-gathering mechanisms on homeless populations or the applicable Comprehensive Housing Affordability Strategy (CHAS) and the size is large relative to that presented by other applications within the applicant's HUD region. The application also reveals an indepth understanding of the homeless population proposed to be served.

1–15 points. The application includes an estimate of the size of the homeless population within the HA's jurisdiction based on credible surveys or reports on homeless populations or the applicable CHAS and the size is of average to less than average size relative to that presented by other applications within the applicant's HUD region or the estimates are based on less credible surveys, reports or other data-gathering mechanisms on homeless populations. The application also reveals a general but less than in-depth understanding of the homeless population proposed to be served.

0 points. If neither of the above statements apply, assign 0 points.

(3) Selection Criterion 3: Program Implementation (25 Points)

(a) Description. The application describes the proposed method to use the rental vouchers to help house the eligible population and provide services.

(b) Rating. 16–25 points. The application describes the timely implementation of a plan that will result in eligible participants finding permanent housing and maintaining residential stability. The plan has all of the following elements and links all the elements in a consistent framework: (a) The proposed outreach and selection efforts ensure that the targeted population is served; (b) The plan provides housing search assistance that will ensure that eligible persons obtain appropriate housing; (c) The plan describes a program that will link participants to appropriate supportive services; (d) The plan describes an evaluation component that will result in an evaluation of program effectiveness by the HA, and by the entities that certify to provide supportive services, and the applicant's making appropriate improvements to the program.

1–15 points. The application provides for the timely implementation of a consistent plan that generally covers the following elements for the use of rental vouchers by the HA: (a) The plan describes minimal outreach and selection efforts for the targeted population of eligible persons that will be served; (b) The plan provides housing search assistance only to a portion of the eligible persons; (c) The plan describes a program with a minimal link of participants to appropriate supportive services on a consistent basis; and (d) The plan describes that a limited overall program evaluation will be conducted by the HA, and the entities that certify to provide the supportive services, for effectiveness and appropriate improvements.

0 points. If none of the above statements apply, assign 0 points.

(4) Selection Criterion 4: Quality of the Proposed Supportive Services. (25 points)

(a) Description: The application provides a description of the proposed supportive services over the period of the rental assistance.

(b) Rating. 16–25 points. The application describes available supportive services that will meet almost all of the needs of the targeted population. This is evidenced by: (a) The identification of supportive services appropriate to the needs of the population proposed to be served; (b) A

description of the directly-related qualifications or experience of the supportive services staff; and (c) A plan for monitoring and evaluating the supportive services provided to eligible persons to ensure that services are appropriate to their changing needs on an individual basis.

1–15 points. The application describes the proposed supportive services that will meet some but not most of the needs of the eligible population. This is shown by: (a) The identification of supportive services appropriate to some of the needs of the population proposed to be served; (b) A description of indirectly-related qualifications or experience of the supportive services staff; and (c) A plan for monitoring and evaluating the supportive services provided to eligible persons that is somewhat likely to ensure services appropriate to their changing needs.

0 points. If neither of the above statements apply, assign 0 points.

(5) Selection Criterion 5: Documentation of First Year Supportive Service Funding. (20 points)

(a) Description: The application provides copies of firm financial commitments to fund the first year of the proposed supportive services. The first year of supportive services funding is expected to exceed 16% of the total amount of rental assistance funding requested from HUD.

(b) Rating. 0–20 points. Points will be awarded based on the extent to which the firm commitments are available at the time of application. Points will be given by dividing the value of the documented firm commitments for first year funding for supportive services into the value of the requested rental assistance as shown in the following table:

Percent	0	1–5	6–10	11–15	16+
Points	0	5	10	15	20

(D) Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of local government. The Field Office/Indian Programs Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the local unit of government.

(E) Funding Applications for Regional Office Competition

(1) General

The set-aside of funding for very low-income homeless persons with disabilities is for a competition among eligible HAs within each HUD Region. The HUD Field Office/Indian Programs Office will review and rate the HA applications on the basis of the selection criteria and then forward the HA applications on the basis of the selection criteria and then forward the applications and the rating sheets to the appropriate Regional Office for review, re-rating of the criteria (if necessary to ensure consistency in the rating of applications in that region), and selection of the highest-rated approved applications.

(2) Maximum Funding Allowed

The Regional Offices may not approve funding for an HA under this NOFA for more than 200 units.

(3) Minimum Funding Allowed

The Regional Offices may not approve funding for an HA under this NOFA for less than 25 units, unless:

(i) The HA requests fewer than 25 units; or,

(ii) The residual budget authority after funding higher ranking applications is insufficient to fund at least 25 units.

(4) Funding Procedure

The Field Office/Indian Programs Office will forward all approvable applications along with the rating sheets to the Regional Office. The Regional Office will, after its review and re-rating, rank within that region all approvable applications. The Regional Office must select for funding applications in rank order until all the housing assistance budget authority is selected for use.

Where a Regional Office selects for funding applications according to rank order, only to find it has some number of units left, but not enough to fund the next fundable application in its entirety or for the minimum of 25 units, that application can be selected for funding to the extent of the number of units available.

The Regional Office must promptly notify the applicable Field Office or Indian Programs Office as to the status of any applications from HAs and, if applicable, the amount of budget authority to be made available for HA applications that were selected for funding by the Regional Office.

(F) Reallocation of Funds Between Metropolitan and Nonmetropolitan Areas

The funding for this set-aside is not subject to the split between metropolitan and nonmetropolitan areas as usually required by 24 CFR 791.403 (a). An HA may apply for funding in its jurisdiction and the Regional Office will select for funding applications without regard to the metropolitan or nonmetropolitan designation of the county or counties.

III. Checklist for Application Submission Requirements

(A) General

The application from the HA shall include the information requested in this section and Attachment 1 of this NOFA as well as any other data which the applicant wishes to submit.

(B) Required Application Contents

(1) HA Application Forms

Each HA must submit Form HUD–52515, Application for Existing Housing (Attachment 2), in accordance with the applicable program regulations, and a cover letter stating the total number of rental vouchers requested and the minimum number acceptable (See Item 1 of Attachment 1).

(2) Description of Homeless Population

The application must describe on not more than 4 pages the number and characteristics of the very low-income homeless persons with disabilities to be served and the living situations that qualify them as homeless. The basis, or

source, used for making these estimates and estimates of the homeless population in the HA's jurisdiction should be identified and may include local surveys or reports, including the applicable CHAS.

(3) Narrative on Program Implementation

The application must describe on not more than 10 pages:

(a) An explanation of how the proposal will serve persons who are disabled, including any specially designed program components that serve any targeted homeless population, including persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have acquired immunodeficiency syndrome (AIDS or related diseases) and their families;

(b) The proposed plan for the use of the rental assistance, and the proposed outreach efforts used to obtain participation of the targeted population of eligible persons;

(c) The method that the HA will use to select eligible persons and may describe any written agreements with transitional housing facilities, homeless shelters, local government agencies and/or service providers to assist in the identification of eligible persons;

(d) The plan for housing search assistance and how participants will be linked to appropriate supportive services;

(e) The plan for evaluating the effectiveness of the overall program by the HA, and the entities that certify to provide supportive services, and how improvements will be made, if needed; and

(f) How the program will be carried out in a timely manner.

(4) Description of Supportive Services

The application must include the following information on the proposed supportive services, on not more than 8 pages for items (a) to (d) and on additional pages for items (e) and (f):

(a) A description of the range of supportive services that are appropriate to the target population being served, and the planned method for delivery at scattered sites;

(b) Identification of the proposed service provider(s) and a statement of the qualifications and experience of the provider(s) in managing the service that will be provided;

(c) The management and staffing plans of the service provider(s), including the number and qualifications of professionals and volunteers, with respect to the service to be provided;

(d) A description of how the service will be monitored, evaluated and, if necessary, adapted to meet the changing needs of the population to be served and how the services assist participants in assimilating into the community;

(e) A certification ensuring the provision of supportive services over the term of the rental assistance; and

(f) Firm financial commitments from supportive service providers for the first year of funding. Financial commitments for funding of supportive services for the second through the fifth year of the demonstration program. The total financial commitments must match on a one-for-one basis the amount of funding provided for rental assistance. Any documentation from States, units of general local government, Indian Tribes, HAs, service providers and other third parties for supportive services commitments made to the program must follow the required format in Attachment 7 of this NOFA.

(5) Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See attached Certification for Drug-Free Workplace, Attachment 3.)

(6) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) generally prohibits recipients of Federal contracts, grants, and loans from the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the text for the certification regarding lobbying (Attachment 4 and Standard Form LLL, "Disclosure Form to Report Lobbying", Attachment 5) are attached.

(7) Certification Regarding Compliance With Single Audit Act

The HA must be in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, in order to be eligible for funding. The certification must include the period covered by the last audit conducted and submitted to HUD in accordance with these requirements, or the period covered by the audit currently under contract. Applicants who are not currently in compliance with the audit requirements are not eligible for funding. To complete the application, an HA must submit a certification of its compliance with the Single Audit Act (see Attachment 6).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate Field Office/Indian Programs Office no later than the date and time specified in Section II of this NOFA. The Field Office/Indian Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the Field Office and/or Indian Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate Field Office/Indian Program Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Attachment 1 of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, Single Audit Act certification, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C)

of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effects on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including HAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

(D) Accountability in the Provision of HUD Assistance

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published, at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912), and is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Any questions concerning the Reform Act rule should be directed to the Office of Ethics, Room 2158, Department of

Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f).

Dated: January 25, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Attachment 1—Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the application.

INITIAL SCREENING CHECKLIST

HA		Field Office		
Yes	No	Yes	No	
				1. The application contains a cover letter stating the *total* number of rental vouchers requested in the application and indicates whether the applicant is willing to accept a reduced number and the minimum number the applicant is willing to accept.
				2. The application includes Form HUD 52515, application for Section 8 rental voucher funding.
				3. The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (1) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office/Indian Programs Office they do not have to be resubmitted.
				4. The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed or have been approved by the Field Office/Indian Programs Office. In the latter case, each proposed variation shall be specified and justified.
				5. The application contains a written narrative explanation of the proposed implementation of the set-aside of rental voucher funding for homeless persons with disabilities as required by Section III(B)(3) of this NOFA. The narrative must show a schedule for the lease-up of 100% of the units within 12 months of application approval.
				6. The application contains a description of the data which shows the extent of homelessness within the HA's jurisdiction as required by Section III(B)(2) of this NOFA.
				7. The application includes a certification from the HA or a State, local government, Indian Tribe or private entity (See Attachment 7) that ensures the provision of supportive services, including funding the services itself if the planned resources do not become available for any reason.
				8. The application contains a description of supportive services proposed to be provided over the five year term of the ACC as required by Section III(B)(4) of this NOFA.
				9. The application also contains documentation for the proposed supportive services program as required by Section III(B)(4) of this NOFA.
Requirement for Drug-Free Workplace Certification, Anti-Lobbying Certification and Disclosure Statement and Single Audit Act				
				The application meets HUD's drug-free workplace requirement set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (Attachment 3).)
				The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. To comply, HAs must submit an Anti- Lobbying Certification (Attachment 4) and if warranted, a Disclosure of Lobbying Activities (Attachment 5).
				The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR Part 44; or OMB Circular No. A–133. The HA must submit a Single Audit Act Certification (Attachment 6). HAs who are not currently in compliance with the audit requirements will not be eligible for funding.

BILLING CODE 4210–33–P

Application for Existing Housing

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

ATTACHMENT 2

Send the original and two copies of this application form and attachments to the local HUD Field Office

OMB Approval No. 2577-0169 (exp.9/30/95)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send the completed form to either of these addresses.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. **(HUD use only)**

Mailing Address of the PHA

Requested housing assistance payments are for :
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (city, town, etc.)	**County**	**Congressional District**	**Units**

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count: Elderly, Handicapped, Disabled — Efficiency	1-BR	2-BR	Non-Elderly — 1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	**Total Dwelling Units**
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check * the appropriate boxes)	**Submitted with this application**	**Previously submitted**
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form **HUD-52515** (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

BILLING CODE 4210-33-C

Attachment 3—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C) Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements—Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

(Name & Title)

_____

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

_____

(Name & Title)

_____

(Signature & Date)

Attachment 4—Certification Regarding Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-33-P

Disclosure of Lobbying Activities

ATTACHMENT 5

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
☐ c. cooperative agreement
☐ d. loan
☐ e. loan guarantee
☐ f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
☐ c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form-LLL

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient, Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form-LLL-A

BILLING CODE 4210–33–C

Attachment 6—Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR Part 44; or OMB Circular No. A–133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized HA Official)

(Name & Title)

(Signature & Date)

Attachment 7—Commitments for Supportive Services

A. Certification

Applicants must submit the following certification which may be signed by an authorized certifying official for the HA in the case that the HA itself will ensure the provision of supportive services. In the case that a State, local government, Indian Tribe or private entity will ensure the provision of supportive services, an authorized certifying official of that entity would sign this certification:

The _____[insert name of HA or other entity] assures that it will make available supportive services appropriate to the needs of the population to be served and at least equal in value to the aggregate amount of rental assistance funded by HUD for the full term of the ACC for this program and that this [organization/government] will fund the supportive services itself if the planned resources do not become available for any reason.

Signature of Authorized Certifying Official:
Date:_____
Title:_____

Name of State, local government, Indian Tribe or private entity, if applicable:

Applicant name and PHA Number: _____

B. Documentation of Supportive Services

Applicants must submit the following documentation for supportive services. All cash contributions and the value of in-kind contributions must be listed below in order to count as matching resources and must include documentation in accordance with the instructions provided below. Applicants do not have to provide documentation of the full amount of the supportive service match in the application. Applicants receiving awards will be required to provide over the term of the grant supportive services that are valued at an amount at least equal to the aggregate amount of rental assistance.

1. Summary by Type of Documented Resources

Enter in this chart the source of the supportive services commitment, the type of service committed, the application's page number for the documentation and the cash value as required in Section I(D)(4) of the NOFA. Documented cash and in-kind resources may be funded or provided from Federal, State, local, non-profit and private sources. List only those that are committed at the time of the application.

SUMMARY OF SUPPORTIVE SERVICES CHART

Name of provider	Type of service contributed	Page No. of documentation	Value of service	HUD use only

2. Supportive Services Documentation

Applicants that list the cash value of matching resources in 1 must document these resources in the appropriate format described below and on letterhead stationery, except the documentation for private individuals need not be printed on letterhead. No other format will be accepted as evidence of a firm commitment.

a. *Applicant Cash*

_____[date]

If this proposal is funded, _____[applicant name] will commit $_____ [amount] of its own funds for _____[type of activity] to be made available for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program. The funds will be available on _____[date].

[Signature and title of applicant's authorized representative]

b. *Third Party Cash, includes State, local government, Indian Tribe or private entity Cash*

_____[date]

If this proposal is funded, _____ [third party name] will commit $ _____ [amount] to _____ [applicant/coordinating entity] for _____ [type of activity] to be made available for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program. The funds will be available on _____ [date].

[Signature and title of third party's authorized representative]

c. *Third Party Non-cash Resources*

_____ [date]

If this proposal is funded, _____ [third party name] will commit to make available _____ [type of resource] valued at $ _____ [amount] to be made available for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program of _____ [name of applicant/coordinating entity]. These resources will be available on _____ [date].

[Signature and title of third party's authorized representative]

d. *Donated Professional Services*

_____ [date]

If this proposal is funded, _____ [professional's name] will commit to make available _____ [type of resource ordinarily performed for payment] valued at $ _____ [amount based on customary charge] to be made available for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program of _____ [name of applicant/coordinating entity]. These resources will be available from _____ [date] to _____ [date].

[Signature and title, if any]

e. *Volunteer Time*

_____ [date]

If this proposal is funded, _____ [volunteer's name] will commit to provide _____ [number] hours of volunteer time to provide _____ [type of activity] to be made available for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program of _____ [name of applicant/coordinating entity]. The total value of these services is $ _____ [amount based on $10.00 per hour]. These resources will be available from _____ [date] to _____ [date].

[Signature and title, if any]

f. *Contribution of a Building Owned or Leased*

_____ [date]

If this proposal is funded, _____ [applicant/other party name] pledges the {building {or} leasehold interest of the building} at _____ [site address] to be made available for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program. The building has a fair market value of $ _____ [amount] {or} fair rental value of $ _____ [amount] annually, and at constant value will amount to $ _____ [amount] over _____ [term of the lease]}. An appropriate independent third party made this assessment which is based on comparable properties in the area. These resources will be available on _____ [date].

[Signature and title of applicant/other party's authorized representative]

g. *Contributed Materials*

_____ [date]

If this proposal is funded, _____ [name of organization/individual] commit _____ [material being committed] for the supportive services component of the Section 8 Rental Voucher Set-aside for Homeless Persons with Disabilities program. The estimated value of this material is $ _____ [amount].

[Signature and title of applicant/other party's authorized representative or signature and title, if any]

[FR Doc. 94–2092 Filed 1–31–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
February 1, 1994

Part III

The President

Presidential Determination No. 94–13—Lifting Restrictions on U.S. Relations With the Palestine Liberation Organization

Federal Register
Vol. 59 No. [illegible]
Tuesday, February 1, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–13 of January 14, 1994

Lifting Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

I. Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1993, Public Law 103–125, as amended, I hereby:

(A) certify that it is in the national interest to suspend the application of the following provisions of law until July 1, 1994:

(1) Section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(2) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(3) Section 1003 of the Foreign Relations Authorization Act, Fiscal years 1988 and 1989 (22 U.S.C. 5202); and

(4) Section 37 of the Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(B) certify that the Palestine Liberation Organization continues to abide by its commitments: in its letter of September 9, 1993, to the Prime Minister of Israel; in its letter of September 9, 1993, to the Foreign Minister of Norway; and in, and resulting from the implementation of the Declaration of Principles on interim self-government arrangements signed on September 13, 1993.

II. Pursuant to the authority vested in me by section 516 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Public Law 103–87, I hereby determine that the suspension of section 516(a) of that Act with respect to the Palestine Liberation Organization (PLO), programs for the PLO, and programs for the benefit of entities associated with it, which accept the commitments made by the PLO on September 9, 1993, is in the national interest.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 14, 1994.

[FR Doc. 94–2386
Filed 1–31–94; 9:44 am]
Billing code 4710–10–M

Editorial note: For the statement by the Press Secretary on the death of Norwegian Minister Holst, see page 86 of volume 30 of the *Weekly Compilation of Presidential Documents.*

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Tuesday, February 1, 1994

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4547–4778.....1

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1994

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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February 3	February 18	March 7	March 21	April 4	May 4
February 4	February 22	March 7	March 21	April 5	May 5
February 7	February 22	March 9	March 24	April 8	May 9
February 8	February 23	March 10	March 25	April 11	May 9
February 9	February 24	March 11	March 28	April 11	May 10
February 10	February 25	March 14	March 28	April 11	May 11
February 11	February 28	March 14	March 28	April 12	May 12
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February 16	March 3	March 18	April 4	April 18	May 17
February 17	March 4	March 21	April 4	April 18	May 18
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February 24	March 11	March 28	April 11	April 25	May 25
February 25	March 14	March 28	April 11	April 26	May 26
February 28	March 15	March 30	April 14	April 29	May 31

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